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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

No. 566

GRACE TRENT, LUCY McKEE, FRANK A. JULIAN, JOHN C. RAINBOW, DENNIS M. DE MARS, ERNEST POTTER, EDWIN KLEINE, JAMES T. WOOD, EDWARD F. EDINGER, AND HARRY J. DUKE,

Appellants,

vs.

LESTER HUNT, SCOTT ADAMS, JOHN J. CHRISMAN, EDWIN JOHNSTON, E. RALPH HIMELICK, ATTORNEY-GENERAL OF THE STATE OF INDIANA, M. CLIFFORD TOWNSEND, HENRY F. SCHRICKER, ROY NELSON, JAMES R. CARTER, PRESTON CATES, CLAIRE CURRY, RAYMOND STEELE, AND JOSEPH OSER,

Appellees.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

STATEMENT AS TO JURISDICTION OF UNITED STATES SUPREME COURT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, plaintiffs, as appellants, file this, their statement disclosing the basis upon which they contend that the Supreme Court has jurisdiction upon appeal to review the decree in question.

(a) Statutory Provisions Sustaining the Jurisdiction.

Appellants rely upon Judicial Code, Section 238 (28 U. S. C. 345), and Judicial Code, Section 266 (28 U. S. C. 380), respectively, as amended, as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal, the decree appealed from having been made by a specially constituted three-judge court.

(b) The Statutes of the State of Indiana the Validity of Which is Involved.

The statutes of the State of Indiana, the validity of which is involved in this appeal, are:

(1) Art. 10-1302 of Chapter 13, Burns Indiana Statutes, 1933, hereinafter referred to as 'Inciting of Violence' statute. Entire text appears in Appendix A annexed hereto.

(2) Art. 10-1506 of Chapter 15, Burns Indiana Statutes, 1933, hereafter referred to as 'Riotous Conspiracy' statute. The entire text appears in Appendix A annexed hereto.

(3) Art. 10-506 to 10-509, inclusive, of Chapter 5, Burns Indiana Statutes, 1933, hereinafter referred to as 'Desecration of Flag' statute. Entire text appears in Appendix A annexed hereto.

(4) Art. 10-1101 of Chapter 11, Burns Indiana Statutes, 1933, hereafter referred to as 'Conspiracy to Commit a Felony' statute. The entire text appears in Appendix A annexed hereto.

(c) Timeliness of Appeal and the Decree Sought to be Reviewed.

The decree appealed from is a final judgment denying appellants permanent injunction, restraining enforcement of the aforesaid statutes, sought on the grounds of their unconstitutionality on their face and as construed and ap-

plied. The decree appealed from was made and entered June 12, 1941 (R. —).

The court delivered an opinion on such date, which is annexed hereto as Appendix B (R. —).

The petition for appeal is duly filed and presented within ninety (90) days from June 12, 1941 and is therefore timely.

(d) Nature of the Case and the Rulings of the Court.

This action was brought by appellants in their individual capacity, as well as in their representative capacity for that class of persons known as "Jehovah's witnesses", to redress the deprivation of appellants' civil rights of freedom of speech and of press and freedom to worship Almighty God as provided for in the Civil Rights Act of 1871 as amended (8 U. S. C. A. 43) and in the Judicial Code, Section 24 (14) (28 U. S. C. A. 41, sub. 14), on the grounds that appellants had been deprived of such rights and had also been deprived of their liberty without due process of law, contrary to the Fourteenth Amendment to the United States Constitution.

The complaint alleged imminence and immediacy of irreparable injury and damage, and repetitious enforcement of the aforesaid statutes, and also alleged exceptional circumstances and great, grave and immediate danger of hopeless loss to the appellants. Complaint filed December 27, 1940 appears in the record at pages —.

Appellees filed their answer to the complaint.

Appellants duly sought preliminary injunction *pendente lite* and on January 13, 1941, a specially constituted district court (Evan A. Evans, Circuit Judge, Walter C. Lindley, District Judge, and Robert C. Baltzell, District Judge) heard the application upon affidavits of the parties and witnesses; and on March 17, 1941, rendered a decree denying application (R. —), and on such date filed an opinion stating as reasons therefor that the appellees were not threat-

ening the appellants. (Such opinion is annexed hereto as Appendix C.) This finding was based upon the affidavits of the appellees, as follows:

> "* * * this affiant has made no threats to continue any activity against any of the plaintiffs. They are not prohibited from distributing literature, worshiping, and doing anything that any other citizen might do in Fayette County, Indiana, and so far as this affiant is concerned, they will not be interfered with."
> (Affidavit of Appellee Scott Adams) (R. —).

> "That said defendants in this cause have not threatened to continue to arrest and prosecute Jehovah's witnesses in Connersville, Fayette County, Indiana, or any other person so long as said person does not violate the statute of the State of Indiana; * * * that this affiant has at no time and will at no time in the future make any threats of any persecution or prosecution of anyone regardless of race, color, religion or creed and * * * said complaint as filed by said plaintiffs is based upon imaginary hallucinations and is groundless."
> (Affidavit of Appellee John J. Chrisman) (R. —).

Appellants filed several affidavits on preliminary hearing alleging that appellees had threatened to continue to arrest and prosecute appellants. The trial court entirely ignored appellants' affidavits and relied entirely upon the two above affidavits of appellees.

Thereafter appellants, believing that appellees would keep their word and were telling the truth, that they would not interfere with Jehovah's witnesses, resumed their preaching of the gospel in Fayette County on April 6, 1941, when seventy-five (75) of Jehovah's witnesses, men, women and children, from two-and-one-half years to seventy years of age, were each and all arrested and charged with the crime of conspiracy to commit a felony, to wit, distributing

literature alleged to advocate the overthrow of the government by force and violence, and also charging each of them with the crime of distributing literature that violated the 'inciting of violence' statute of Indiana.

Thereafter on April 11, 1941, appellants duly filed their supplemental complaint setting forth the arrests and prosecutions of April 6, 1941, and alleging a conspiracy to deprive them of their civil rights by reason of such prosecutions, showing immediate irreparable injury and damage, and asking for a stay order, staying the State court proceedings as to new criminal proceedings against the seventy-five arrested on April 6, 1941 (R. —).

Thereafter on April 28, 1941, with leave of court, appellants filed their amendment to the Supplemental Complaint, alleging the fact that the appellees had unlawfully procured indictments against each of said seventy-five persons, growing out of the arrests and complaints filed on April 6, 1941 (R. —).

On April 28, 1941, said specially constituted three-judge district court heard the evidence here summarized:

The witness Frederic W. Franz testified that he was employed in the administrative offices of the Watchtower Bible and Tract Society, a membership corporation, organized under the laws of the State of New York, which is the governing body of Jehovah's witnesses throughout the entire United States; that Jehovah's witnesses are an unincorporated body of followers of Jesus Christ, each of whom has dedicated his life to the service of Jehovah God and entered into a covenant to do the will of Almighty God as expressed in the Bible, precluding their engaging in any political activity and requiring them to obey all the laws of Almighty God and to proclaim the message of the great Theocratic Government, God's Kingdom, to be established fully throughout the earth at this time by Christ Jesus, and for which Kingdom Jesus taught His disciples to pray to

Almighty God. As ordained ministers, Jehovah's witnesses employ literature as the most effective means of bearing this message to the people, to read in the privacy of their homes. Jehovah's witnesses are commanded to keep themselves separate from the world; that religion is demonism, as shown by the Scriptures, in that religion teaches the false doctrines of immortality of the soul, the Devil's first lie; and in that religion also teaches the trinity, three gods in one and one in three, also purgatory and hell fire. The hope of the people in God's Theocratic Government under the reign of Christ, during which there will be a general resurrection of those who have died and are now asleep in the grave, *sheol*. Jehovah's witnesses do not salute any flag, because they are bound by God's covenant and command contained in the Bible at Exodus 20:3-5; 1 Kings 19:18 and Hosea 13:2; that such is not the interpretation of Jehovah's witnesses but the interpretation of Almighty God; that for many years the Watchtower Bible and Tract Society maintained offices in every foreign country, but in recent years, due to the totalitarian rule, such offices had been confiscated and closed down in all countries except Great Britain as to the Eastern Hemisphere. The work throughout the entire earth is carried on under the direction of the Watchtower Bible and Tract Society from Brooklyn, New York. The United States is divided into regions, with each region under supervision of a "regional servant", a traveling representative. Each region is divided into zones, and each zone is under the supervision of a "zone servant". Each zone is divided into companies under supervision of a "company servant", in each city and county in every county and state in the Union. The way of working the towns of each zone is by "zone assemblies" where groups of Jehovah's witnesses gather together to call at the doors of the people at a particular time with Bible literature; that the work is carried on by voluntary

contributions, the literature being printed at cost price and no profit is made by any individual; all members of the headquarters staff at Brooklyn receive ten ($10) dollars per month allowance and room, board and laundry service. The literature relates exclusively to Bible prophecy, as God's revealed Word, plainly showing that religion is a snare employed by Satan through selfish men to prevent the people from seeing the truth concerning Jehovah's purposes toward mankind, and showing further that the time is near at hand when Jehovah God will destroy Satan's entire organization, invisible and visible, including commercial, political and ecclesiastical elements of the present world and all persons who willingly support said organizations; that such destructive work will be done by Jehovah's invisible forces at the battle of Armageddon, and is to be followed by the complete establishment of a government to be ruled over by Christ Jesus, known as The Theocracy, which will remain forever in the earth, bringing peace, prosperity, happiness and everlasting life to all persons who willingly obey all the commands of Jehovah God. R. —, Exhibits 1 to —, inclusive.

E. H. Nein testified that the work of Jehovah's witnesses had been carried on in Connersville, Indiana, and Fayette County for many years and in 1937 a convention was held there at which more than one hundred of Jehovah's witnesses were in attendance. R. —.

Grace Trent testified that Jehovah's witnesses had been distributing their literature in Connersville, from door to door, since 1917. R. —.

Since February 1935 the Connersville company of Jehovah's witnesses consisted of thirteen active door-to-door workers or "publishers", almost all women. Appellant Grace Trent served as "company servant" in charge of the local activity; that they met at her home one or more nights of each week to study the Bible and the Watchtower

literature, Bible aids, and also to discuss ways and means of more effectively presenting the literature to the people from door to door.

That prior to June 19, 1940, representatives of the American Legion post at Connersville had requested that Jehovah's witnesses appear at the "Legion Home" to discuss the Watchtower literature. Accordingly, Grace Trent, Lucy McKee, Clemmie Evitts, Keziah Ullery, and Mrs. Toole went to such "Home" on that night and where Roy Nelson, Claire Curry and others of the Legionnaires, appellees, objected to the literature as being "subversive" and insisted that it should not be distributed, to which the women replied, "We must obey God rather than man."

The next day, June 20, 1940, the women (Ruby Revalee, Frances Laughlin, Grace Trent, Lucy McKee, Keziah Ullery, Clemmie Evitts) were distributing the literature from house to house in Connersville and were stopped by Legionnaires Roy Nelson, Preston Cates and James Carter, appellees, who said, "You cannot do this work here." On refusal of the women to discontinue, they went away and returned with appellees Sheriff Lester Hunt and Deputy Sheriff Scott Adams. During the discussion the women were asked if they would salute a miniature flag that Deputy Sheriff Scott Adams had on his coat and the women said they could not salute the flag because God's law forbade them to do so. Thereupon the five women were arrested and taken to jail, charged with violation of the "desecration of the flag" statute, and were held in jail without bond for several days. They were arraigned before the appellee, Edwin Johnston, Circuit Judge of Fayette County.

Prior to their arraignment they had attempted to secure local counsel without success and finally friends contacted Victor F. Schmidt of the State of Ohio bar to represent them. Because said attorney advised the women not to plead guilty to the misdemeanor charge of desecration of

the flag, appellee Johnston denied said Victor Schmidt the right to represent the women and ordered him to go back to Ohio where he came from and thereupon the women were arraigned without counsel and pleaded not guilty and were returned to jail without bond.

On that occasion the courtroom was filled with a number of local townspeople. As Victor Schmidt left the courtroom a number of such local persons chased him down the halls of the courthouse and out the front door to his automobile and threatened to mob him and beat him up for offering to defend the women, and thereupon drove him out of town, following him in their cars.

The next day the appellee Lester Hunt read to the five women, Trent, McKee, Evitts, Ullery and Laughlin, while still confined in jail, an affidavit filed against them by appellee Deputy Sheriff Scott Adams, charging them with riotous conspiracy, which affidavit reads as follows:

> "• • • did then and there unlawfully, feloniously and purposely conspire and confederate together for the purpose of doing an unlawful, purposely and maliciously inciting the people of the county of Fayette in the State of Indiana against all forms of organized government and to disrespect of the flag of the United States of America • • • contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Indiana."

(See Volume of Fayette Circuit Court Proceedings, appellees' Exhibit No. —; also Complaint, R. —.)

Before reading to the women the affidavit, appellee Hunt said, "The judge says that the desecration of the flag does not carry a stiff enough bond, so this new charge is being brought against you." Thereafter the women were separately arraigned on the charge of riotous conspiracy. They were told that they would be sent to the penitentiary for ten years under this charge of riotous conspiracy. Three

of the women, namely, Clemmie Evitts, Keziah Ullery and Frances Laughlin, were coerced and forced by the appellees John J. Chrisman, Ralph Himelick and Edwin Johnston into pleading guilty to the misdemeanor charge of desecration of the flag. They were advised by said appellees that if they would plead guilty to flag desecration, the riotous conspiracy charge would be dismissed as to them. Upon pleading guilty they were released without bond from the felony charge.

The two women, Grace Trent and Lucy McKee, refused to accept said officials' proposition to compound a felony, and refused to plead guilty to both charges; whereupon they were remanded to jail without bond for several weeks and remained in jail for six weeks when they were released on $3,000 bail pending trial, as result of efforts of Walter Reese, Indiana attorney, employed by Victor Schmidt, Ohio attorney aforesaid.

An unsuccessful attempt was made to remove the case from the county and judge on the ground of prejudice, and on September —, 1940, appellants Trent and McKee were put to trial before a jury and appellee Edwin Johnston, Circuit Judge, in defense of said riotous conspiracy affidavit. R. —.

On such trial said appellants were represented by Walter Reese, of Shelbyville, Indiana, Victor Schmidt, of Rossmoyne, Ohio, and Hayden Covington, of Brooklyn, New York. Throughout the trial the appellants' attorneys and friends, Jehovah's witnesses, were threatened with mob violence, physical injury and death as they came to and from the courtroom and during the time they attended trial each day from September 18 to 23, inclusive.

Appellants' motions for directed verdict were overruled and on the night of September 23 the jury returned its verdict finding Grace Trent and Lucy McKee, appellants, guilty as charged and assessed their punishment as im-

prisonment from two to ten (10) years in the Women's State Prison at Indianapolis and a fine of $500.

The sole basis for the conviction was that the women met together at their homes at night time to study the Watchtower literature above described, and also came to the American Legion hall at night time and discussed with the appellees, Legionnaires, the contents of the literature at request of said appellees. It is claimed by appellees that because the literature advocates that Almighty God will set up a Theocratic Government in the earth, following His battle at Armageddon, which battle will destroy all present-day worldly institutions by His irresistible and invisible power, this to be followed by full, permanent establishment of His Theocratic Government under the rulership of the Lord Jesus Christ, as invisible Leader and overlord—that study of such literature at meetings held in the night time constituted a conspiracy for incitement to violence against the government. Also, because the literature explained the reason why Jehovah's witnesses cannot and will not salute the flag of any nation in violation of the commands of Almighty God, such constituted desecration of the United States flag, and that to discuss such literature at a meeting attended by three or more persons at night time was a violation of the riotous conspiracy statute.

Repeatedly during the trial appellants and their attorneys called upon the State Police and the Governor for police protection during the trial, and such protection was refused.

On September 23, while the attorneys were out to supper they were threatened with violence at the hands of the Connersville rabble element and were pelted with eggs and vegetables while returning to the courthouse. During the same recess, Charles Young, one of appellants' friends and a companion of Attorney Victor Schmidt, was theatened with death at the hands of a local thug. These matters were

called to the attention of the appellee John J. Chrisman and the sheriff, appellee Lester Hunt, who said that they could not do anything about it and that they did not believe that the threats would be carried out.

At the time the verdict was read, the women were immediately taken into custody by the Sheriff and denied the right to remain on their bail pending disposition of their motion for new trial, and were taken to the Women's State Prison at Indianapolis, where they remained until their motion for new trial was ruled on by the trial judge and an appeal taken. Petition for bond pending appeal was allowed on December 11, 1940, at which time they were released on recognizances of $3,000 each.

Shortly after the verdict was read and the two women were taken away by the sheriff, Victor Schmidt who had attended the trial as attorney for the two women Trent and McKee, left the courtroom together with his wife and two friends, Charles Young and Roy Munson, amidst threats of mob violence from the spectators who crowded the courtroom, the stairway and the corridors of the courthouse. As they went down the stairs they were crowded by a group of angry thugs, saying, "That's the attorney, we will get him when he gets on the outside." The thugs blocked the stairway and made it impossible for the attorney and companions to retreat. They were forced out onto the street and courthouse lawn, whereupon they were pelted with fruit, rotten vegetables and eggs. They attempted to flee ahead of the mob and escape to their cars; the mobsters then struck Attorney Schmidt about the face, shoulders and back and head, also struck his wife, Mildred Schmidt, in the back with their fists, and also kicking and beating said attorney, his wife and their two companions, violently driving them up the street, the mobsters meantime hollering, cursing and threatening to kill their victims, and shouting that there were five hundred of them and that they were

going to drive the attorney and his companions out of town and back to Ohio where they came from.

All during this assault, the attorney, his wife and two companions were screaming and calling for the police and begging the mobsters to desist from striking them, which pleas were ignored entirely. The mobsters yelled, "It will do you no good to call for the police; the police are with us." Thereupon said attorney, his wife and two companions were driven approximately one mile from the courthouse by the mob to a point beyond the city limits of Connersville. Each step that they took while being thus driven they were kicked, beaten and struck, cut and bruised by the insane, demonized mobsters, who continued to holler, "To hell with Jehovah's witnesses; call upon your Jehovah God now and see if he will deliver you, you sons of bitches; our god is *old glory*. If we had got that damned son-of-a-bitch Covington [meaning appellants' attorney Hayden Covington], we would have killed him tonight."

Said mob consisted of about three hundred or four hundred people on foot that proceeded through the main part of town to its outskirts. Several friends of the attorney passed him and attempted to pick them up, but he and his wife and companions were beaten and pulled away from the cars by the mob, who attempted to overturn the cars and threatened to kill the drivers if they stopped. After reaching a point beyond the city limits, Attorney Schmidt and his wife passed a parked car and were pulled into it and rescued from the mob and taken to their home in Cincinnati where they received medical treatment for several weeks and months for shock, contusions and abrasions, and severe permanent injuries resulted. A picture of the attorney taken two days after his rescue from the mobsters appears in the evidence as Appellants' Exhibit No. —.

The witness Frank Julian testified that he saw two police officers standing on the sidewalk and watching the mob as

the back end of the mob proceeded ahead of them down the street driving Attorney Schmidt, his wife and two companions out of Connersville that night.

After the escape of Attorney Schmidt and wife, their two companions, Young and Munson, were driven farther into the country by the angry mob, who attempted to run over them with cars as they were driven along the highway. The two escaped in a hard downpour of rain and waded through a river and wandered into a woods into a corn and oat patch, finding refuge under a stack of hay for several hours, where they hid from the mobsters who scanned the woods hunting for them. Young was struck a severe blow by the mob on the back with a heavy boulder and sustained permanent physical injury.

No act was done by the attorney or by his wife and their two companions that was in any sense of the word improper or wrong.

The undisputed evidence shows that the appellees Ralph Himelick and John J. Chrisman saw the Indiana attorney, Walter Reese, of Shelbyville, who aided in the defense of Grace Trent and Lucy McKee, driven out of the courthouse into the mob. Walter Reese saw the appellee Preston Cates, who was a complaining witness at the trial, standing in the mob and pleaded with Cates not to permit him to be mobbed; that Cates had some object in his hand in a position to throw and paid no attention to his pleas; that Reese was thereupon driven down the street, knocked down, struck, and finally fled and found refuge in the jail, where he advised Sheriff Lester Hunt of the mob, but Hunt did nothing about the matter whatsoever.

That when Ruby Revalee, Clemmie Evitts, Keziah Ullery and Frances Laughlin were forced to plead guilty before Circuit Judge Edwin Johnston they were taken to their homes by the sheriff and deputy sheriff to get, at the direction of Circuit Judge Johnston, all the Watchtower lit-

erature, which was confiscated. They were advised and directed by the appellees Edwin Johnston and John J. Chrisman that they must not again distribute any of said literature and that they must discontinue the holding of any Bible studies or meetings in their homes where the literature was discussed. That if they did they would be prosecuted under the riotous conspiracy statute. They were told that the affidavit charging them with such crime would be left to stand against them to insure compliance with such demands. Such charges now stand over the heads of the three women, Clemmie Evitts, Keziah Ullery and Frances Laughlin.

On September 26, 1940 the Connersville appellees held a meeting of the American Legion "Americanism Committee", when the Sheriff deputized seventy-five private citizens of Fayette County for the purpose, according to Hunt, of forestalling any 'invasion' by Jehovah's witnesses in the community and to prevent any future activity on the part of Jehovah's witnesses in distributing the literature objected to by appellees. The special deputies were instructed to arrest Jehovah's witnesses when found distributing in the town the literature objected to.

Because of fear the women disbanded the company of Jehovah's witnesses in Connersville and discontinued holding any meetings and conducting any Bible studies and discontinued the distribution of the literature. All of Jehovah's witnesses were threatened with arrest and prosecution under the aforesaid statutes if they continued to distribute literature or hold meetings in the town and were told that they would be 'sent up' to the same place where Mrs. Trent and Mrs. McKee had been sent, to wit, the Women's State Prison at Indianapolis.

These threats were made by appellees Edwin Johnston, Circuit Judge, John J. Chrisman, prosecuting attorney, Lester Hunt, sheriff, and Scott Adams, deputy sheriff.

After their release from prison in December 1940, Grace Trent and Lucy McKee, together with other of Jehovah's witnesses, brought this complaint in the United States District Court, claiming that the statutes were void on their face because of vagueness and indefiniteness and also that such statutes were being wrongfully and unlawfully misconstrued and misapplied against them so as to deny them and deprive them of their civil rights of freedom of speech, press and worship, secured to them by the United States Constitution.

After the preliminary hearing, appellants Grace Trent and Lucy McKee and all other of Jehovah's witnesses located in the zone of which Connersville is a part, believed in good faith the sworn affidavits of John J. Chrisman and Scott Adams that they would not interfere with Jehovah's witnesses and also believed the statement of the United States District Court, to the effect that the appellees will not interfere with Jehovah's witnesses and arrest them because of the exercise of their rights of freedom of speech, press and worship. Appellants honestly thought that they could safely resume their activities in Connersville and made arrangements to hold a zone assembly and to call upon the residents of Fayette County to present the Watchtower literature aforesaid. On April 6, 1941, Sunday morning, seventy-five of Jehovah's witnesses of such zone, men, women and children, from 2½ to 70 years of age, went to Connersville in their cars, some entire families, for the purpose above stated. None were violent, offensive, truculent, or invaded the property rights of others and none of them were boisterous or loud in their presentation of the gospel message. Thereupon the entire seventy-five (75) were arrested, men, women and children, under direction of appellee Sheriff Joseph Oser, who had been elected to fill the office of Lester Hunt, former sheriff. Sheriff Joseph Oser and Police Chief William Traylor and Fire Chief Howard Cahill,

special deputy sheriff, assisted by the police and several special deputies rounded up and arrested the entire seventy-five persons and incarcerated them in jail. Prosecuting Attorney John J. Chrisman was called by the arresting officers during and after all seventy-five were rounded up, and examined the literature distributed and offered to be distributed, and advised deputy Scott Adams to file an affidavit charging the said seventy-five individuals with violations of the aforesaid statutes, which was thereupon filed against the seventy-five.

On Wednesday, April 9, 1941, John J. Chrisman, prosecuting attorney, procured, by grand jury, an indictment against the said seventy-five named persons, which charged them in the first court as follows:

> "• • • did then and there unlawfully, riotously, violently, and tumultuously distribute books, pamphlets and literature, and play phonograph records against the will and pleasure of citizens of said Fayette County, Indiana, and thereby causing a commotion among said citizens of said Fayette County, Indiana, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Indiana."

The said Chrisman procured by grand jury an indictment against the said seventy-five named persons, which charged them in the second count as follows:

> "• • • did then and there unlawfully, knowlingly and feloniously unite, combine, conspire, confederate and agree to and with each other for the object and purpose and with the unlawful and felonious intent, then and there feloniously to advocate, incite, write and with intent to forward such purpose, sell and distribute books, circulars, papers, journals and other written and printed communications in and by which there is advocated and incited the overthrow by force or violence of the government of the United States

of America, of the State of Indiana and all government, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Indiana."

The said Chrisman procured by grand jury an indictment against the said seventy-five named persons, which charged them in the third count as follows:

"* * * did then and there unlawfully and feloniously advocate, incite, write and with intent to forward such purpose, print, publish, sell and distribute documents, books, circulars, papers, journals and other written and printed communications in which there is advocated or incited the overthrow by force or violence of the Government of the United States of America, of the State of Indiana and of all Government, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Indiana."

The sole basis of the indictment was the distribution of the booklet entitled "God and the State", the language objected to being the statement appearing on page 29 of that booklet, reading as follows:

"The highest court of the land has shifted the responsibility of compulsory flag-saluting upon boards of education or school boards, manifestly because some members of that court are ashamed to acknowledge Jehovah, the Almighty God, as the Supreme Being." [Exhibit —]

Prosecuting attorney John J. Chrisman threatens to have indicted for perjury anyone who signs an affidavit in Fayette Circuit Court for a change of venue on grounds of prejudice in such cases.

Thereupon each of said seventy-five persons, including several minors under the age of twenty-one, were held for one week in default of $3,000 bail each; were released on

April 12, 1941, on a blanket bond in the amount of $10,000, provided by surety company through friends.

During their incarceration, thirty-five of the seventy-five arrested were imprisoned in an abandoned building in Connersville, were kept under constant guard, were not given beds or cots or anything whatever to sleep on or to cover themselves with; were forced to sleep on the floor with only newspapers to lie on during their entire incarceration. Two photographs of the conditions under which they were confined were introduced in evidence as Exhibits Nos. —— and ——.

Among those arrested and indicted by the grand jury were, to wit, a boy of sixteen; a boy of ten; a girl of eleven, two young ladies of fifteen and others of fourteen, seventeen and twenty, and several other boys and girls under twenty-one; and three infirm women over the age of seventy.

The sheriff permitted one of the young boys to be assaulted and viciously beaten by one of the local mobsters present in court while arraignment was made on Sunday April 6, and the deputy without provocation struck and assaulted one of the young boys while searching him after his arrest.

As and after each arrest was made by Joseph Oser and Scott Adams, sheriff and deputy sheriff, Howard Cahill, fire chief, and William Traylor, police chief, threats were made against Jehovah's witnesses by such officials, each stating substantially that the work of Jehovah's witnesses of distributing literature could not be carried on in Fayette County; that it had to stop and that anybody found distributing such literature would be arrested and similarly charged again.

Appellants Grace Trent and Lucy McKee and their companions, Keziah Ullery and Frances Laughlin, testified that

they desired to resume Bible studies in Connersville and to resume the door-to-door distribution of the Watchtower literature as required by their covenant with Almighty God, but that they had failed to do so because of the threats and previous prosecutions of Mrs. Trent and Mrs. McKee and the subsequent prosecutions of the seventy-five other of Jehovah's witnesses by the appellees. They felt that if they were not permitted to continue with their preaching of the gospel of the Kingdom that it would be a violation of their covenant with Almighty God that would result in their everlasting destruction at the hands of Almighty God.

The undisputed evidence showed immediate irreparable injury and lack of adequate remedy at law; threats on the part of appellees Joseph Oser and John J. Chrisman, to continue to arrest and prosecute Jehovah's witnesses and to continue to enforce the above described statutes and to apply the same to activity of appellants; that such proposed enforcement was imminent and the appellants had no adequate remedy at law; that they had been deprived of their civil rights, suffered great damage and loss of liberty and loss of the right to pursue their avocation and occupation.

The undisputed evidence showed that the Legionnaire appellees had threatened Jehovah's witnesses with interference and application of the statutes. Under the law of Indiana a private citizen has the right to make an arrest without a warrant, of anyone seen committing a felony in his presence, which right the Legionnaire appellees chose to exercise to stop appellants. Said Legionnaires were deputized by Hunt to keep Jehovah's witnesses out of the county.

As to Ralph Himelick, he is a licensed attorney and member of the Connersville, Indiana, Bar, thereby a public official specially employed to prosecute and persecute Je-

hovah's witnesses in Fayette County as agent of The American Legion.

Upon the trial the appellants and appellees stipulated in open court in part as follows: "That neither the literature nor these plaintiffs advocate that the creature man should submit any act or acts of force or violence to bring about this destruction" of religious, commercial and political institutions. R. —.

In the findings of fact, the trial court found that Jehovah's witnesses did not advocate the overthrow of the government by force or violence. (Finding No. 7)

In the complaint and in oral argument, as well as in briefs filed in the trial court, appellants attacked the statutes as void on their face because vague and indefinite and also claimed that the statutes, as construed and applied by the appellees, were unconstitutional and void to the extent so applied, because they denied and deprived appellants of their rights of freedom of speech, press and worship, contrary to the Fourteenth Amendment to the United States Constitution. Under the Civil Rights Act of 1871, as amended, appellants claim the right to the injunction to redress the deprivation of their civil rights.

The trial court on the application for permanent injunction refused to grant the injuction on the ground that, (1) there was no showing of imminent immediate proposed enforcement; (2) no immediate injury was shown; and (3) appellants and their seventy-four companions, Jehovah's witnesses, had an adequate remedy at law by appeal to the State Supreme Court and from there to the United States Supreme Court.

In the petition for appeal and the assignments of error filed with this statement, appellants complain of the final judgment of the United States District Court for and on account of the grounds hereinafter set forth.

(e) Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States.

Preliminary Discussion.

A case identical to this is that decided June 17, 1941 by the United States District Court for the Eastern District of Illinois, involving the validity of a criminal statute of that state applied in the same manner and under like circumstances as are here involved. The style of that case is *Bevins et al.* v. *Prindable et al.* It is appealed by Jehovah's witnesses acting through same counsel as appears here. It is appealed to this Court and will be docketed simultaneously with this case. Time of this Court will be saved by considering both cases together.

See also the case of *Hannan et al.* v. *City of Haverhill et al.*, No. 211, October Term 1941 of this Court, now pending and undetermined.

Jurisdiction of Subject Matter.

The trial court held that it had jurisdiction of the subject matter and the parties by virtue of Section 24 (14) of the Judicial Code (28 U. S. C. A. 41, sub. 14) and the Civil Rights Act of 1871 as amended (U. S. C. A., Title 8, Sec. 43). See opinions on preliminary and final hearings. R.

First.

The trial court committed reversible error in holding that no extraordinary circumstances or danger of great and immediate irreparable loss and injury were shown requiring an injunction restraining defendants from arresting and prosecuting the appellants under the criminal statutes in question; and in finding, contrary to the undisputed evidence, that the prosecuting attorney, sheriff and his deputy had not threatened Jehovah's witnesses and appellants with future prosecution under the criminal statutes in question.

Grace Trent testified that Lester Hunt, Sheriff, and Scott Adams said that none of that literature could be put out in Fayette County, and anyone found distributing it would be arrested and prosecuted. (R. —) That the only reason meetings and distribution of literature had been discontinued was because they would be prosecuted and sent to the penitentiary again as threatened by Lester Hunt and Scott Adams. (R. —)

Frances Laughlin testified that Circuit Judge Johnston and Prosecuting Attorney Chrisman said that the more serious charge of the felony "riotous conspiracy" would be held over their heads, and if they pleaded guilty and discontinued meetings and distribution of the literature there "would never be anything more to it". (R. —) That when Keziah Ullery, Clemmie Evitts and Frances Laughlin were fined under their plea of guilty, appellee John Chrisman said that 'we must not give out any or circulate any literature or they would put us where McKee and Trent were, in the penitentiary'. (R. —)

Keziah Ullery testified that they had been unable to give out any literature or hold any meetings because of the felony charge hanging over their head. (R. —) That she heard John Chrisman say he wanted the charge left pending to prevent them from engaging in any such activity. (R. —)

John J. Chrisman called as an adverse witness testified that he directed that the affidavits charging "desecration of the flag" and "riotous conspiracy" be filed against the five women because he considered refusal to salute the flag and a discussion of same by appellants as a violation of such statutes. That he considered that the literature "was subversive" and that a discussion of it in the night time constituted "riotous conspiracy". (R. —) That he directed the filing of the affidavit and procured the indictment against the seventy-five for "conspiracy to commit a

felony, to wit, distribute literature which advocated the overthrow of the government by force and violence". (R. —) He said "they were arrested and prosecuted because I felt that there was sufficient evidence that they had violated the criminal law of Indiana." (R. —) We quote from the record as follows:

> "Covington: You told the court you considered the entire book subversive and against the government. Now if that is continued to be put out, do you intend to continue to prosecute?
>
> "A. I would not say I would prosecute anyone. I merely present the evidence to the court and let them make the decision." (R. —)

Lucy McKee testified that since release from prison she was afraid to continue distribution of literature or hold meetings in Connersville because she was afraid she would be arrested and sent to prison again, and that she had heard of threats by the appellants to prosecute her further if she did continue. (R. —)

Louise Smith, one of the 75 arrested on April 6, 1941, testified that she was arrested by the present Sheriff, Joseph Oser, that the sheriff said that the literature could not be put out in Fayette County. (R. —)

Lester Hunt, former sheriff, testified that 75 members of the local "Americanization Committee" of the American Legion were deputized to prevent Jehovah's witnesses from distributing literature and to arrest those found distributing same (R. —).

Signa Lee Heimerdinger testified that on April 6, 1941, she was arrested by the present sheriff, Joseph Oser, who said that none of the literature published by Jehovah's witnesses could be distributed in Fayette County, and that they would be arrested for distributing it (R. —).

Ross W. Castle, of Connersville, testified that the persons arrested April 6, 1941 were not prosecuted by the city

but under direction of Sheriff Oser and that the police department was assisting the sheriff and his deputies (R. —).

The following proceedings were had with respect to John J. Chrisman:

> "Covington: You testified on the stand that you intended to make arrests if you thought they violated a law. Are you taking that back?
> "A. No (R. —).

There were a great number of witnesses who heard deputy sheriff Scott Adams say that the literature could not be put out in Fayette County and that he would arrest any one found distributing the literature in the county and charge them with violation of the statutes. He also testified to like effect when called as an adverse witness.

Upon written motion duly made by appellants alleging that the present sheriff, Joseph Oser, threatened to continue to apply the aforesaid statutes to Jehovah's witnesses and to continue to arrest any of Jehovah's witnesses found distributing literature in the future (R. —); and by stipulation of the parties to the case (R. —), he was by order of court substituted as a party defendant under the rules in place and stead of Lester Hunt, former sheriff, and Scott Adams, his deputy, who resigned subsequent to April 28, 1941 when final hearing began of this case in the court below (R. —).

Therefore the undisputed evidence shows that there are threats of imminent and immediate enforcement of the statutes as to Jehovah's witnesses, and immediate future arrests on account of distribution of the literature resulting in irreparable injury and damage to appellants; and that the court's finding of no threats is not supported by evidence, but is also contrary to the undisputed evidence.

Second.

It is necessary for the protection of the constitutional rights and civil rights of appellants and of other of Jehovah's witnesses that the United States District Court enjoin state officers and appellees from instituting criminal actions under the criminal statutes alleged to be unconstitutional on their face and as construed and applied to appellants and other of Jehovah's witnesses, because immediate and irreparable injury is shown.

Hague v. *C. I. O. et al.* 307 U. S. 496;
Hague v. *C. I. O. et al.* 101 F. (2d) 774;
Ex parte Young, 209 U. S. 123, 162-165;
Pierce v. *Society of Sisters* 268 U. S. 510, 535-536;
Swift & Co. v. *United States* 276 U. S. 311;
Vicksburg Waterworks v. *Vicksburg* 185 U. S. 65, 82;
Greene v. *Louisville & Interurban R. Co.* 244 U. S. 499, 506-507, 520-521;
Sterling v. *Constantin* 287 U. S. 378, 393, 403-404;
Fidelity & Deposit Co. v. *Tafoya,* 270 U. S. 426-434;
Work v. *Louisiana* 269 U. S. 250, 254;
Colorado v. *Toll* 268 U. S. 228, 230;
Civil Rights Act of 1870, as amended 1871;
Reid et al. v. *Borough of Brookville et al. (Pa.)* [a case involving Jehovah's witnesses] (May 2, 1941) — F. Supp. —;
Kennedy et al. v. *City of Moscow (Idaho) et al.* [a case involving Jehovah's witnesses] (May 14, 1941) — F. Supp. —;
Zimmerman et al. v. *Village of London (Ohio)* [a case involving Jehovah's witnesses] (April 25, 1941) — F. Supp. —;
Beeler et al. v. *Smith et al. (Kentucky)* [a case involving Jehovah's witnesses] (June 4, 1941) — F.

Supp. —; Entire Text of United States Dist. Ct., E. D. Ky. Opinion annexed hereto as Appendix E;
Cline v. *Frink Dairy Co.* 274 U. S. 445;
Moore v. *Fidelity & Deposit Co.*, 272 U. S. 317;
Adams v. *Tanner* 244 U. S. 590;
Kennington v. *Palmer* 255 U. S. 100;
Truax v. *Raich*, 239 U. S. 33; 219 F. 273;
Dobbins v. *Los Angeles*, 195 U. S. 223, 241;
Terrace v. *Thompson* 263 U. S. 197;
Oney et al. v. *Oklahoma City et al.* [a case involving Jehovah's witnesses] (June 9, 1941) — F. (2d) —;
Ludwig v. *Western Union* 216 U. S. 146;
Western Union Tel. Co. v. *Andrews* 216 U. S. 165;
Ex parte Bransford 310 U. S. 354, 361;

Third.

The fact that the appellants and the seventy-four other individuals have the right to urge their defense of the unconstitutionality of the statutes, both on their face and as construed and applied, in the Fayette Circuit Court and on appeal from convictions to the Supreme Court of Indiana and from that court ultimately to this Court by certiorari or appeal, does not constitute an adequate remedy at law equivalent to the relief asked for in equity.

Stratton v. *St. L. & S. W. Ry Co.*, 284 U. S. 530, 534;
Risty v. *Chicago R. I. & P. Ry. Co.*, 270 U. S. 378, 388;
Smith v. *Ames*, 169 U. S. 466, 516-517;
Terrace v. *Thompson*, 263 U. S. 197, 214-216;
American Life Ins. Co. v. *Stewart*, 300 U. S. 203, 214-216;
Railroad and W. Comm. of Minn. et al. v. *Duluth Street Ry. Co.*, 273 U. S. 265, 628;
Petroleum Exploration, Inc. v. *Public S. Comm.*, 304 U. S. 209;

Reid et al. v. *Borough of Brookville (Pa.) et al.* [a case involving Jehovah's witnesses] (May 2, 1941) — F. Supp. —;

New Hampshire Gas & Elec. Co. v. *Morse*, 42 F. (2d) 90, 93;

Y. Cong. Eng. et al. v. *Trinidad*, 271 U. S. 500, 507, 511-515, 528.

Fourth

The activity of Jehovah's witnesses is a constant and continuing activity of distribution of literature and each act of distribution would, according to the view of the appellees, constitute a separate alleged violation of the statutes. The acts and conduct of the appellees in interfering with appellants is a continuing act and violation of appellants' constitutional rights constantly going on and which cannot be compensated in money damages, constitute the best possible reasons for interference by a court of equity.

Nashville C. & St. L. Ry. Co. v. *McConnell*, 82 Fed. 65, 70;

Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479;

Johnson v. *Wells Fargo*, 239 U. S. 234;

Pierce v. *Society of Sisters*, 268 U. S. 510, 535-536.

Fifth.

The trial court committed reversible error in holding that it was without jurisdiction and power to grant the stay asked for in the supplemental complaint and to enjoin the criminal proceedings instituted on April 6, 1941 after the United States District Court had first acquired jurisdiction over the statutes as to attacking the validity of each statute in question by the filing of the original complaint against the seventy-five of Jehovah's witnesses described in the supplemental complaint brought by appellants because ap-

pellees stipulated that appellants were not guilty of a violation of said statutes by stipulating that the literature did not advocate the overthrow of the government by force and violence and because the trial court had acquired prior exclusive jurisdiction over the Fayette Circuit Court as to the subject matter.

Ex parte Young, 209 U. S. 123, 162-165;
Davis & Farnum Mfg. Co. v. *Los Angeles*, 189 U. S. 207, 217;
In re Sawyer, 124 U. S. 200, 211;
Harkrader v. *Wadley*, 172 U. S. 148.

Sixth.

The trial court committed reversible error in refusing to declare the "riotous conspiracy" and "incitement of violence" statutes void because of vagueness and indefiniteness permitting denial of liberty without due process of law contrary to the Fourteenth Amendment to the United States Constitution.

Herndon v. *Lowry*, 301 U. S. 242;
Stromberg v. *California*, 283 U. S. 359;
United States v. *Cohen Grocery Co.*, 255 U. S. 81;
Lanzetta et al. v. *State*, 306 U. S. 451.

Seventh.

The trial court committed reversible error in refusing to declare the statutes in question unconstitutional and void as construed and applied by appellees, who act in excess of their authority and in an unconstitutional manner, because the undisputed evidence and the findings of fact by the trial court show that the literature circulated by appellants does not violate the law of morals, invade the property rights of others or imperil the safety of the state by clear and present danger or by force and violence, thus deny-

ing appellants of their rights of assembly, speech, press and freedom to worship Almighty God as He commands in His written Word and according to dictates of their consciences, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1870 as amended in 1871.

Cantwell v. *Connecticut*, 310 U. S. 296;
Schneider v. *State*, 308 U. S. 147;
Lovell v. *City of Griffin*, 303 U. S. 444;
Fiske v. *Kansas*, 274 U. S. 380;
De Jonge v. *Oregon*, 299 U. S. 353, 363;
Dearborn Pub. Co. v. *Fitzgerald*, 271 Fed. 479;
Hague v. *C. I. O. et al.*, 307 U. S. 496, 101 F. (2d) 774;
Near v. *Minnesota*, 283 U. S. 697, 713-716;
Grosjean v. *American Press Co.*, 297 U. S. 233.

Eighth.

A valid and constitutional statute becomes invalid when wrongfully construed so as to deny constitutional rights and the enforcement of a constitutional statute in an unconstitutional manner can be enjoined where injury is irreparable and immediate.

Oney et al. v. *Oklahoma City et al.* [a case involving Jehovah's witnesses] (June 9, 1941) — F. (2d) —;
South Holland (Village of) v. *Stein* [a case involving Jehovah's witnesses] (April 17, 1940) 373 Ill. 472, 26 N. E. (2d) 868;
Hague v. *C. I. O. et al.*, 307 U. S. 496, 101 F. (2d) 774, 786;
Concordia Fire Ins. Co. v. *Illinois*, 292 U. S. 535, 545;
Greene et al. v. *L. & I. Ry. Co.*, 244 U. S. 499, 506-508, 520-521;
Sterling v. *Constantin*, 287 U. S. 378, 393, 403-404;
Fidelity & Deposit Co. v. *Tafoya*, 270 U. S. 426, 434;

Work v. *Louisiana*, 269 U. S. 250, 254.
Colorado v. *Toll*, 268 U. S. 288, 230;
Reid et al. v. *Borough of Brookville* (*Pa.*) *et al.* [a case involving Jehovah's witnesses] (May 2, 1941) — F. Supp. —;
Zimmerman et al. v. *Village of London* (*Ohio*) [a case involving Jehovah's witnesses] (April 25, 1941) — F. Supp. —.

DISCUSSION OF STATE STATUTES IN QUESTION.

The "riotous conspiracy" statute makes the agreement to do "any unlawful act" in the night time a felony. It is claimed that the refusal to salute the flag or *explaining* why one refuses to salute a flag constitutes a violation of the "desecration of the flag" statute. This is a minor misdemeanor carrying only a fine of ten-dollar maximum. Because some of the appellants met together at night time in groups of three or more to discuss Bible literature containing such explanation, such "misdemeanor" was graduated and expanded into the felony of "riotous conspiracy" through the application given it by appellees to appellants, resulting in two housewives being sent to the penitentiary for a period of from two to ten years.

The vagueness and extreme flexibility of the statute can be utilized wrongfully to apply it to cover and include the most innocent act. This was demonstrated to the three judges who heard this case in the trial court, thus: "To park an automobile in a forbidden space on the streets of Indianapolis is a misdemeanor prohibited by ordinance and is an "unlawful act" punishable by fine. Assume that the three judges hearing this case could find no proper place to park their car at night while attending a night session of court, or a theatre. Should the judges agree to park the car in a prohibited spot, according to the construction given the statute by appellees, the judges of this Court

in that supposed circumstance could be convicted for 'riotous conspiracy'."

The "inciting of violence" statute is obviously and admittedly not applicable to the activities of Jehovah's witnesses. *The appellees stipulated that the literature did not advocate the overthrow of the government by force or violence.* The trial court also found that the literature *as a matter of fact* did not advocate any man or creature to use force under any circumstances against the government or any political, ecclesiastical or commercial element.

Consequently the affidavit of Scott Adams filed at the instance of John Chrisman, prosecuting attorney, and the subsequent indictment of the 75 witnesses alleging a violation of the "inciting of violence" statute and also of the crime of "conspiracy to commit a felony, to wit, violate the 'inciting of violence' statute" was fictitious, false, defamatory and criminal misuse of the judicial and criminal process of the statutes of Indiana. It is manifestly and admittedly a misapplication of the statute.

If appellees attempt to stretch out of or spell out of the act of "refusing to salute the flag" an act of inciting to violence against the government, the answer is plain. The refusal to salute the flag because of sincere conscientious belief that the Bible forbids such act of saluting, and the act of explaining such refusal or discussing such scruple (either in the daytime or nighttime) cannot rationally be said to amount to overthrow of the government by force. There is no clear and present danger of such results. *Schenck* v. *United States,* 249 U. S. 47, 52. *Herndon* v. *Lowry,* 301 U. S. 242.

The appellees, public officials, plainly and admittedly acted in excess of the statutes relating to inciting of violence and riotous conspiracy by applying them to the activities of Jehovah's witnesses, and thus acted unconstitutionally.

In considering the legality of the acts of the appellees and their threatened future acts, it will be sufficient, here, to view them as based upon the statutes relating to desecration of the flag and inciting of violence. For if those statutes are inapplicable to the activities of Jehovah's witnesses or cannot be constitutionally applied to those activities, the *conspiracy to commit a felony* and the *riotous conspiracy* statutes are inapplicable. Such conspiracy statutes likewise fall along with the statutes made the basis of them.

Upon no rational construction of the "flag desecration" statute can it be said that the refusal to salute the flag for conscience' sake in any way falls within the purview of the statute which prohibits defying, defiling, defaming or casting contempt, either by word or act, upon the flag of the United States. The purpose of such statute is manifestly to punish intentional and criminal disrespect and dishonoring of the national emblem. (*Halter* v. *Nebraska*, 205 U. S. 34.) No such implication attaches to the refusal to salute the flag because of scruple, or to the explanation of such conduct in writing or verbally. The prosecution of Jehovah's witnesses for such conduct plainly derives no authority from the statute. The legislature and the judiciary cannot transmute an act into something that it is not. (*Mobile, Jackson & Kansas City Ry. Co.* v. *Turnipseed*, 219 U. S. 35, 43.) As applied by the appellees the statute punishes any one who for any reason, on any occasion, refuses to salute the flag in public when requested by anyone else to do so. The said Nazi practice of forced flag saluting under severe criminal penalty does not foster patriotism and is inimical to the government as well as to the principles for which this country was founded. Loyalty is not a state of mind inculcated by fear of imprisonment. The acts of appellees are clearly unconstitutional. It has no appropriate relation to the safety of the State and is so obviously unnecessary, unreasonable and wholly in-

consistent with the spirit of American institutions as not to be justified as a matter of convenience. Force flag saluting had its origin with the Nazis.

In the trial court it was argued (as justification for the arrest on April 6, 1941, of seventy-five of Jehovah's witnesses, and much weight given thereto by the judges of that court) that there appears in the booklet "God and the State" (page 29) a statement reading as follows:

> "The highest court of the land has shifted the responsibility of compulsory flag saluting upon the boards of education or school boards, manifestly because some members of that court are ashamed to acknowledge Jehovah, the Almighty God, as the Supreme Being."

We submit that that is a statement of THE TRUTH: That this Court by its own words did expressly shift the responsibility to the school boards. This statement is "fair comment" protected by the constitutional guarantee of free press. In this connection we cite the words of Mr. Justice Frankfurter (in upholding a complaint made by Vice President Wallace against a Federal Court when he was Secretary of Agriculture), to wit:

> "In publicly criticizing this court's opinion the Secretary merely indulged in a practice familiar in the long history of Anglo-American litigation, whereby unsuccessful litigants and lawyers give vent to their disappointment in tavern or press."

Since when has it become sedition to criticize this Court's action?

Not long ago the President of the United States very strongly attacked this Court and relegated it to the 'days of the horse and buggy' and made many harsh statements against the Court. It was the President's legal right to do this as an American citizen. We submit that "The Watch-

tower", press for Jehovah's witnesses, has the same right. If the time has come when the lower courts inaugurate the rule that the Supreme Court of the United States cannot be critized by the citizenry, it is high time that something be done by this Court about it!

Cases Relied upon by Appellees and Trial Court Distinguished.

The trial court relies upon the case of *Watch Tower Bible & Tract Society* v. *Bristol et al.*, 24 Fed. Supp. 57; affirmed December 5, 1938, without opinion, 305 U. S. 572. There the trial court found that the bill was not supported by proof. The trial court said:

> "There are no allegations in the complaint which show that the defendants have threatened further or immediate prosecution if complainants re-visit the city to preach their doctrines or distribute their literature. It is not enough to say that a reasonable assumption may be indulged in that from past performances such prosecution would probably follow. There is no prosecution or threat of prosecution against the corporate complainant."

Also the case of *Watson et al.* v. *Buck et al.* (May 26, 1941), 61 S. Ct. 962, is clearly not in point with the facts here because in that case there was no showing of actual threats of arrests or prosecutions or application of the particular statute. Furthermore, this Court found the statute valid and that it had not been misconstrued. There had been no arrests. Here there have been eighty-one (81) arrests. Actions speak louder than words! Appellees here have actually committed the overt criminal act of foully arresting, abusing and mistreating Jehovah's servants, ordained ministers of Almighty God, and depriving them of their civil rights. It is a known fact that persons who designedly commit criminal acts against others refrain from

making statements that incriminate themselves when confronted by their adversary. In a case where the overt act of repeated prosecution is shown, as here, under a particular statute, such constitutes "circumstantial evidence" which proves immediate and imminent injury and damage.

If the rule were otherwise it would permit the wrongdoer to repeatedly commit the wrongful act of false arrests and carefully guard his statements and not make any statements and thus to escape the equitable powers of a court.

However, we are not compelled to rely upon "circumstantial evidence" to prove the actual threats. The undisputed evidence and express admissions from the witness stand on the part of Lester Hunt, Scott Adams and John J. Chrisman show expressly threats by the present sheriff, Joseph Oser, Scott Adams and John Chrisman to continue to prosecute under the particular statutes any of Jehovah's witnesses found distributing literature. The supposition on the part of the trial court that this case is governed by the two above mentioned cases (*Watson* v. *Buck*, and *Watch Tower* v. *Bristol*) is based upon a false premise and a false finding of fact not supported by evidence and contrary to the undisputed evidence.

The court also relies upon *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, and *Beal* v. *Missouri Pac. R. Co.*, 312 U. S. 45. In those cases the defendant public officials sought only to obtain a single prosecution as a test case in order to establish the constitutionality of a criminal law violated by the plaintiff. There were no continuous and repeated arrests and prosecutions as here are shown. In the *Beal* case judgment was rendered upon the pleadings, and the denials of threats contained in the answer and the statements in the answer that they were not intending to prosecute or threatening to prosecute the plaintiffs and others under the statute were conclusively taken as admittedly true, to wit, that there were no threats. Also, con-

cessions were made in oral argument which waived the question of irreparable injury entirely. This does not exist in this case.

The case of *Fenner* v. *Boykin*, 271 U. S. 240, also relied upon, is distinguishable for the same reasons. There the court held that no facts were established entitling plaintiff to injunction and said:

> "Unless it plainly appears that this course would not afford an adequate protection."

Here the lives, reputation, property, family, liberty, civil rights and very homes of appellants are at stake and at the mercy of the appellees. They are held in excessive bail, put to trial in a community where excessive prejudice prevails, denying them their right of fair trial, held incommunicado, fed poor food in insufficient amount, made to sleep on floors without beds, without mattresses or anything to recline upon except newspapers spread about the floor; are denied their right of freedom of speech, press and worship. It is impossible to compensate these things with money. In the case of *Hague* v. *C. I. O., supra*, this Court said that civil rights are incapable of money valuation. Appellants and their associates are denied their liberty by continuous incarceration which cannot be compensated by money. Their reputation is blackened by the prosecutions. Their very lives are imperiled by reason of mob violence fomented and encouraged by the appellees who take no steps to prevent it and who stand by and act as spectators to such violence. They refuse to do anything about it or to discern the real position of the wrongdoers. All the wealth and property in the world does its owner no good whatever if he is wrongfully deprived of his liberty and incarcerated behind four walls. His liberty is more highly cherished and desired than his property.

The facts in the case at bar are in sharp contrast to those of the cases relied upon by the court below and appellees.

Here appellants are engaged in a continuous course of conduct which gives rise to repeated offenses claimed by appellees to be committed under the statute. In *Dearborn Publishing Co.* v. *Fitzgerald*, 271 Fed. 479, on identical facts as here, the court said:

> "Defendants' action, however, prevents other sales from time to time and from week to week. This is a continuing course of conduct, and if not supported by a valid constitutional law, or is in excess of authority conferred on them by any valid law or ordinance, becomes a continuing and repeated wrong. In this situation a court of equity has from time immemorial granted relief upon two well established principles."

For further cases where injunctions have been sustained by Federal courts, including this Court, on facts similar but not nearly as strong as in this case, see the list of authorities appearing under heading "Second", pages 26 and 27, *supra.*

It is manifest that the Civil Rights Act of 1870 as amended April 20, 1871 (8 U. S. C. A. 43), gives every person the right to resort to equity to redress the deprivation of "civil rights" by public officials under the guise of State statutes. The case of *Hague* v. *C. I. O. et al.*, 307 U. S. 496, is directly in point here, and so held. There this Court upheld the injunction previously granted on facts not as strong as the facts here.

It is submitted that to enforce the strict rule of construction against this Civil Rights statute (which is entitled to a liberal construction), and also to apply against it the arbitrary technical rule announced and applied by the trial court in this case, would be to defeat the very purpose and intent of Congress in passing the Civil Rights Act. While the act did not enlarge the jurisdiction of the court, it certainly did provide and was intended to provide that the Federal courts protect citizens deprived of civil rights in circumstances as revealed here.

The trial court was oblivious to the thirty and more cases (cited at pages 26 to 28, inclusive, *supra*) which were called to its attention. That court also ignored the holding of the United States District Court for the Eastern District of Kentucky, sitting as a statutory three-judge court, in the case of *Beeler et al.* v. *Smith et al.* (decided June 4, 1941, unreported at this writing), entire text of opinion annexed hereto as Appendix E. In that case the wrongful application to Jehovah's witnesses of the sedition statute of Kentucky was enjoined, permanently.

Here the trial court held directly, contrary to the holding of the Federal district court for Kentucky on identical facts, as well as contrary to injunctions granted by eight other Federal district courts, in recent months, on facts identical with the facts in this case, and contrary to the thirty and more cases decided by this Court on the same question.

In *Cohens* v. *Virginia* (1821), 6 Wheat. 264, 404, Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty."

In the case *Ex parte Young*, 209 U. S. 123, where an injunction was sustained under circumstances similar to this, the court said:

> "Finally it is objected that the necessary result of upholding this suit in the Circuit Court will be to draw

> to the lower Federal courts a great flood of litigation of this character, where one Federal judge would have it in his power to enjoin proceedings by state officials to enforce legislative acts of the State, either by criminal or civil actions. To this it may be answered in the first place, that no injunction ought to be granted unless in a case reasonably free from doubt. We think such a rule is and will be, followed, by all judges of the Federal courts."

We submit that constitutional rights were completely broken down in Fayette County. We submit that the courts completely broke down in Fayette County and yielded to the demand of the populace and mobs.

We submit that the treatment received by Jehovah's witnesses in Connersville is identical with the treatment that they have received at the hands of the Nazi Gestapo in Germany, as well as the Nazi rabble, continuously since 1933.

The only place under heaven on this earth that Jehovah's witnesses could appeal to for legal protection was the Federal court. The Federal court turned its back and closed its door and thereby slipped into a state of lethargy after having 'its judicial conscience put to severest test'. (Mr. Justice Frankfurter's opinion in *Minersville etc.* v. *Gobitis,* 310 U. S. 586).

Will this Court awaken the trial court from its profound state of lethargy to a realization of its first duty to America in this time of need—judicial defense at home for those who cry out and appeal to it in desperation and in a proper manner for protection of the rights the forefathers fought and died to establish—freedom of conscience?

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, and we incorporate, by such reference, each and every assignment of error therein con-

tained and hereby make the same a part hereof to show that substantial questions were presented before the United States District Court.

Wherefore the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the trial court disposed of an important Federal question in a way that sharply conflicts with applicable decisions of this Court, and has radically and so far departed from the Constitution of the United States and the accepted and regular course of the jurisdictional procedure as to call for this Court's power of supervision to halt the same.

Confidently submitted,

HAYDEN C. COVINGTON,
SCOTT GING,
Attorneys for Appellants.

APPENDIX A.

Indiana Statutes in Issue.

(References are to Burns Indiana Statutes, 1933.)

Article 10-1506 of Chapter 15.

Riotous Conspiracy.

If three (3) or more persons shall unite for the purpose of doing any unlawful act in the night-time or for the purpose of doing any unlawful act while wearing white caps, masks or being otherwise disguised, they shall be deemed guilty of a riotous conspiracy, and, on conviction, shall each be imprisoned in the state prison not less than two (2) years nor more than ten (10) years, and each be fined in any sum not exceeding two thousand dollars ($2,000).

Art. 10-506 to 10-509 of Chapter 5.

10-506. *Desecrating United States Flag.*

Any person who, in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed to public view any such flag, standard, color, or ensign of the United States upon which shall be printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any words or figures, or numbers or marks, or inscriptions, or pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale, or for use, any article or thing or substance, being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to

distinguish the article or thing, on which shall be placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be deemed guilty of a misdemeanor and punishable as hereinafter provided.

Art. 10-507 of Chapter 5.

10-507. Desecrating United States Flag—Flags, standard, and color defined.—The words flags, standard, color, or ensign of the United States, as used in this act, shall include any flag, any standard, any color, any ensign, or any representation of a flag, standard, color, ensign, or a picture of a flag, standard, color or ensign, made of any substance whatever, or representation of any substance whatever, and of any size whatever, evidently purporting to be either of said flag, standard, color or ensign of the United States, or a picture or a representation of either thereof, upon which shall be shown the colors, the stars and stripes of (or) any number of either thereof, or by which the person seeing the same, without deliberation, may believe the same to represent the flag, or the colors, or the standard, or the ensign of the United States of America.

Art. 10-508 of Chapter 5.

10-508. Desecrating United States flag—Limitations on application of act.—This act shall not apply to any act permitted by the statutes of the United States, or by the United States army or navy regulations, nor shall this act be construed to apply to the regular issue of a newspaper or other periodical on which shall be printed said flag disconnected by (from) any advertisement.

Art. 10-509 of Chapter 5.

10-509. Desecrating United States flag—Penalty for violation.—Any person violating any provisions of this act shall be fined in any sum not less than five dollars ($5.00) nor more than ten dollars ($10.00), and for a second and

subsequent violation thereof, such person shall be fined in any sum not less than ten dollars ($10.00) and not more than twenty-five dollars ($25.00).

Art. 10-1302 of Chapter 13.

10-1302. *Inciting of violence prohibited.*

It shall be unlawful for any person to advocate or incite, or to write, or, with intent to forward such purpose, to print, publish, sell or distribute any document, book, circular, paper, journal or other written or printed communication, in or by which there is advocated or incited the overthrow, by force or violence, or by physical injury to personal property, or by the general cessation of industry, of the government of the United States, of the state of Indiana, or all government.

Art. 10-1303 of Chapter 13.

10-1303. Penalty for violation.—Any person or persons convicted of violating any section of this act shall be fined not more than five thousand dollars ($5,000) or imprisoned for not more than five (5) years, or both.

Art. 10-1101 of Chapter 11.

10-1101. *Conspiracy to commit felony.*

Any person or persons who shall unite or combine with any other person or persons for the purpose of committing a felony, within or without this state; or any person or persons who shall knowingly unite with any other person or persons, body, association or combination of persons, whose object is the commission of a felony or felonies, within or without this state, shall, on conviction, be fined not less than twenty-five dollars ($25.00) nor more than five thousand dollars ($5,000), and imprisoned in the state prison not less than two (2) years nor more than fourteen (14) years.

APPENDIX B.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, et al., *Plaintiffs*,

vs.

LESTER HUNT, SCOTT ADAMS, et al., *Defendants*.

Filed June 12, 1941. Albert C. Sogemeier, Clerk.

Memorandum.

Before: Evans, Circuit Judge, and Lindley and Baltzell, District Judges.

PER CURIAM. The plaintiffs in this action are seeking to enjoin the defendants from enforcing three (3) certain criminal statutes in the State of Indiana, alleging "that each of the three above described state statutes is unconstitutional and void, as construed and applied by defendants against plaintiffs because, as so construed and applied, each of said statutes has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press, of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1."

Plaintiffs prayed for an interlocutory injunction, and pressed the same; therefore, a statutory three-judge court was organized pursuant to the provisions of Section 266 of the Judicial Code. (28 USCA 380) A hearing was had by such court upon the motion of plaintiffs for an interlocutory injunction, the evidence was adduced, consisting of affidavits filed by both the plaintiffs and the defendants, and by some oral testimony. The interlocutory injunction was denied, and the cause is now submitted on final hearing.

It will not be necessary to re-state the facts, because, pursuant to Rule 52 of the Rules of Civil Procedure, there is filed simultaneously herewith a Special Findings of Fact, from which Findings the court has stated its Conclusions of Law. For the purposes of this Memorandum it is sufficient to say that each plaintiff is a member of a large group known as Jehovah's witnesses, and, during the month of June, 1940, they were engaged in their activities in Fayette County, Indiana, more especially in Connersville, the county seat of that county and a city of approximately thirteen thousand population; that objection was made by many of the citizens of that city to such activities, and, as a result thereof, affidavits were filed in the Fayette Circuit Court by the defendants Chrisman, as prosecuting attorney, charging the plaintiffs, Trent and McKee, and other members of their group, with having violated certain criminal statutes of the State of Indiana; that said Trent and McKee were tried to a jury in said circuit court upon a charge of having violated the Riotous Conspiracy statute, convicted and sentenced to prison. An appeal was perfected by them to the Supreme Court of Indiana, the court that has exclusive jurisdiction over criminal appeals from circuit courts in the state. They were released on bond, and that appeal is now pending.

While there has been some delay in procuring the transcript of the evidence which constitutes the bill of exceptions to be filed in the Supreme Court in that case, yet such delay has not been occasioned by the acts or conduct of the defendants, or either or any of them. In fact, the Attorney General of Indiana, whose duty it is to represent the state in the Supreme Court in all appeals in criminal cases, has co-operated with the plaintiffs and has voluntarily agreed in that court to an extension of time for the filing of the bill of exceptions. The delay seems to have been occasioned by a misunderstanding on the part of the court reporter in the Circuit Court as to the preparation of the transcript, or a failure upon her part to follow the instructions of the plaintiffs' attorney in the preparation thereof. In any event, the actions of the court reporter cannot in any manner be attributed to any of the defendants, or to any other officials

or laymen of Fayette County, or of the city of Connersville. She was solely responsible for her acts.

The complaint in this action was filed on December 27, 1940. A hearing was had on plaintiffs' petition for an interlocutory or preliminary injunction on January 13, 1941, and on March 17 following a judgment was entered denying such injunction. There were no activities on the part of plaintiffs or other members of their group in the city of Connersville or in Fayette County following the denial of such injunction until on Sunday, April 6. Neither had there been any activities upon their part in that city or county since during the summer of 1940, when they encountered difficulties out of which grew the prosecution of Trent and McKee in the Circuit Court heretofore referred to.

For the purpose of conducting activities of Jehovah's witnesses, the United States is divided into regions, zones and communities. A region is comprised of many states, or parts of states, and their activities in such region are supervised and directed by a member who is known as a regional servant. A region is divided into zones, and each zone is comprised of several states, or parts of states, and their activities in such zone are supervised and directed by a member who is known as a zone servant. The zone may be divided into communities and the members living therein constitute a company. On April 6, and for some time prior thereto, and at the present time, the city of Connersville and Fayette County were and are located within Zone 7, which zone is under the supervision and direction of zone servant, John C. Rainbow, of Cincinnati, Ohio. As such zone servant, he planned in advance for a large number of their members from states other than Indiana to go to Connersville and engage in their activities on Sunday morning, April 6. Pursuant to these plans, seventy-five (75) members from the states of West Virginia, Ohio and Kentucky met at Kingdom Hall, 110 East 8th Street in Cincinnati, Ohio, early that morning and were instructed by the zone servant and each was assigned certain specific territory in Connersville in which to carry on his or her activities, each receiving from him a cardboard upon which was traced a plat showing the streets in Connersville which were included in the territory to be covered by the member

receiving such plat. After having been thus instructed and directed, the seventy-five (75) members, among whom was the zone servant, proceeded by automobile to Connersville, Indiana, a distance of approximately sixty (60) miles, arriving there about nine or nine-thirty o'clock that morning, and going immediately to the territory which had theretofore been assigned to them by their zone servant, beginning their activities by going from house to house explaining or attempting to explain their belief, and selling or attempting to sell the books or literature which they had brought with them for that purpose. In some instances, the husband remained in the automobile, sending his wife and small children to call upon the residents within his territory. This being Palm Sunday and at a time of the day when many citizens of Connersville were either attending church or were on their way to church, many complaints were made in person and by telephone by the citizens of that city to either the prosecuting attorney, sheriff, deputy sheriff, chief of police, or mayor. As a result of these complaints and believing that the criminal laws of the state were being violated, the defendant, Chrisman, acting in his official capacity as prosecuting attorney, prepared, or had prepared, affidavits charging each of the seventy-five (75) members with the violation of a criminal statute. Warrants were issued and the members were arrested and confined until released upon bond later that week. A grand jury was impaneled on April 9 and an indictment was returned charging these members with the violation of the criminal laws of Indiana. The indictment was afterwards dismissed as to many of the boys, girls and children, and the others were released on bond. No further action has been taken in that case.

On April 11, a supplemental complaint was filed in this case wherein, among other things, it is alleged that the defendants and other public officials of Connersville and Fayette County have threatened to continue to arrest the plaintiffs and other members of their group if they continue their activities in that community. The supplemental complaint brings to the court's attention, through allegations contained therein, the occurrences of April 6 and charges that the present sheriff, Joseph Oser, and the chief of po-

lice, William Traylor, have arrested and are threatening to arrest members of Jehovah's witnesses in violation of their constitutional rights, and asks that they each be made a party defendant. This request was afterwards withdrawn by the plaintiffs and no notice was ever served upon them, or either of them. However, on June 6, the plaintiffs filed a motion asking that Joseph Oser, the present sheriff, be substituted as a party defendant in lieu of defendant, Hunt, under Rule 25 (d) of the Rules of Civil Procedure, and, under stipulation of the parties and by order of court, such substitution was made on June 12. It is also alleged in the supplemental complaint that the defendants and other officials in Fayette County have conspired to falsely charge the plaintiffs and other members of their group with the violation of the following Indiana statute:

> "Any person or persons who shall unite or combine with any other person or persons for the purpose of committing a felony, within or without this state; or any person or persons who shall knowingly unite with any other person or persons, body, association or combination of persons, whose object is the commission of a felony or felonies, within or without this state, shall on conviction, be fined not less than $25.00 nor more than $5000.00 and imprisoned in the state prison not less than two nor more than fourteen years." (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1101.)

The indictment returned on April 9 was in three (3) counts, the first of which charged a violation of the Indiana statute prohibiting riots (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1505); the second of which charged a violation of the statute last above set out, the felony alleged to have been the object of the conspiracy being the violation of the inciting of violence statute (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1302); and the third of which charged the violation of the inciting of violence statute. On April 28, by an amendment to the supplemental complaint, a copy of this indictment is fully set forth. The plaintiffs, in their supplemental complaint, ask that an injunction be issued by this Court, restraining the

prosecution in the State court of the defendants named in this indictment "on account of the fact that jurisdiction is first attached in and to the United States District Court with respect to this controversy by and through the filing of the original complaint here, and that all proceedings in the State courts should be stayed until this controversy is decided by this Court." The defendants filed answers to the complaint, the supplemental complaint and the amendment to the supplemental complaint, and the trial upon final hearing was begun on April 28 in this Court and concluded on May 2.

Jurisdiction is based upon a statute of the United States which says that "The district courts shall have original jurisdiction as follows: (14) Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute * * * of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (28 U. S. C. A. 41 (14)). It is the contention of plaintiffs and the State statutes attacked by them are unconstitutional and void, as construed and applied by defendants, and that, therefore, they are being deprived of their rights under the Constitution and laws of the United States by the enforcement of such statutes in the manner in which they allege such statutes are being enforced and threatened to be enforced by the defendants. It is their position, therefore, that this Court has jurisdiction under the provisions of the statute, *supra,* and that it is not necessary to have diversity of citizenship (which is not present) nor is the jurisdictional amount necessary. With this position, we are in accord. Under the allegations of the complaint this Court has jurisdiction.

The three (3) statutes of Indiana, the validity of which is challenged by plaintiffs, are as follows:

(1) "Any person who, in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or pictures

or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed, to public view any such flag, standard, color or ensign of the United States upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words, or figures, or numbers or marks, or inscriptions, of pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale or for use, any article or thing or substance, being an article of merchandise or a receptacle of merchandise, upon which shall have been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish the article or thing, on which shall be placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be deemed guilty of a misdemeanor * * *." (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-506.)

(2) "If three (3) or more persons shall unite for the purpose of doing any unlawful act in the nighttime or for the purpose of doing any unlawful act while wearing white caps, masks or being otherwise disguised, they shall be deemed guilty of a riotous conspiracy, and, on conviction, shall each be imprisoned in the state prison not less than two (2) years nor more than ten (10) years, and each be fined in any sum not exceeding two thousand dollars ($2000)." (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1506.)

(3) "It shall be unlawful for any person to advocate or incite, or to write, or, with intent to forward such purpose, to print, publish, sell or distribute any document, book, circular, paper, journal or other written or printed communication, in or by which there is advocated or incited the overthrow, by force or violence, or by physical injury to personal property, or by the general cessation

of industry, of the government of the United States, of the State of Indiana, or all government." (Burns' Indiana Statutes, Annotated, 1933, Sec. 10-1302.)

This Court is asked by the plaintiffs to enter an order declaring said above described statutes invalid and void under the Fourteenth Amendment of the Federal Constitution, etc. It is not contended by plaintiffs that the defendants, Jackson, as Attorney General, Beamer, as his successor, Townsend, as Governor, or Schricker, as his successor and as present Governor, took any part in or had any knowledge of the things of which they complain in their complaint, in their supplemental complaint, or in the amendment thereto. They are made defendants simply because of their official positions and because the validity of State statutes is challenged. Such defendants are not now threatening to enforce said statutes as against the plaintiffs, nor have they, at any time in the past, so threatened. It is the duty of the Attorney General to appear in the Supreme Court and represent the State in all criminal cases appealed to that Court. He is performing that duty in the case of Trent and McKee, but that is the only action upon his part which, in any manner, affects the plaintiffs or any other members of their group. The enforcement of such statutes is a part of the duties of the local officials. Of the local officials who were such at the time of the filing of the complaint the term of the then defendant, Hunt, as sheriff, has expired, and the term of the defendant, Johnston, as circuit judge, has expired. Neither of these two parties holds any official position at this time, and neither of them has held any official position in Fayette County since December 31 last. Since the evidence shows that all their acts were done in an official capacity in good faith in the performance of their official duties and that neither did anything in his individual capacity, either singly or in concert with others, in an attempt to deprive these plaintiffs of their rights under the Constitution and laws of the United States, and that they, nor either of them, ever have threatened, nor are they or either of them now threatening, to do anything that will so deprive them, there is no occasion to issue an injunction against them.

The defendants, Himelick, Nelson, Carter, Gates, Curry and Steele, are private citizens of Connersville, neither of them having held any official position during the time in question, with the possible exception of Gates, who was named a deputy sheriff at one time but who never qualified or acted as such. All of the acts done by them were done as individuals and not as officials. The defendant, Himelick, is a lawyer, and assisted the prosecuting attorney in the prosecution of the plaintiffs, Trent and McKee, under the Riotous Conspiracy charge, but he was under private employment and was not acting as a deputy or special prosecuting attorney in the trial of that case. He did only the things that were required of him as an attorney to properly represent his client. Neither the defendant, Himelick, nor any of the other private citizen defendants in this action conspired together or with any other person or persons to prosecute these plaintiffs or any other member or members of their group or to deprive them of their rights under the Constitution or laws of the United States. Neither of them has threatened, nor are they at this time threatening, to prosecute the plaintiffs or any other members of their group. The hearing fails to disclose any evidence which would warrant or justify the issuance of an injunction against them, or either of them. Neither of them took any part in the occurrence on April 6, nor did they, or either of them, counsel or confer with any other person or official who participated in the arrest and indictment of the seventy-five (75) members who were arrested on that date.

The remaining defendants, Oser, Adams and Chrisman, were public officials on April 6, 1941, being sheriff, deputy sheriff and prosecuting attorney, respectively, of Fayette County at that time. However, on or about May 20, 1941, the defendant, Adams, resigned as deputy sheriff, and, since that date has not held, and does not at this time hold any official position in Fayette County or in Indiana. The evidence discloses that the defendant, Oser, was not a public official at the time of the trial of Trent and McKee and that he did nothing as an individual in the prosecution of that case. The evidence further discloses that the defendants, Adams and Chrisman, did nothing in the prosecution

of that case except what they were required to do in their official capacity. If they erred in the performance of those duties the evidence fails to show that such errors were the result of a conspiracy on their part to deprive these plaintiffs or any other member or members of their group of their rights under the Constitution and laws of the United States. Any errors that they may have committed in the prosecution of that case are subject to review by the Supreme Court of Indiana in the appeal now pending in that court. They, together with the now defendant, Sheriff Oser, and some of the police officers of Connersville, did assist in the arrest of the seventy-five (75) members on April 6 in that the defendant, Chrisman, as prosecuting attorney, prepared or had prepared the affidavits and caused the warrants for their arrest to be issued, and the defendants, Oser and Adams, as sheriff and deputy sheriff, respectively, assisted in the arrest of such members. In thus doing, each acted in his official capacity in good faith and in the honest belief that such action upon his part was justified under the circumstances and was necessary to preserve order in the community and to prevent another outburst of violence. Whether they exercised good judgment in the discharge of their official duties is beside the point. It is sufficient to say that, in their honest opinion, they did what they believed to be necessary in the discharge of their official duties and in accord with their oaths as such officials. They were charged with a duty of protecting the citizens of Connersville and Fayette County in their rights to worship God as they saw fit, to attend the church of their choice unmolested, and to the peaceful enjoyment of their homes undisturbed, as well as to protect the rights of the seventy-five (75) members who came from foreign states on Sunday morning and sought to engage in their activities when many local citizens did not care to be disturbed by such persons, preferring rather to be left to their own religious belief and not be disturbed in the privacy of their homes.

Each class of individuals was entitled to the protection of the officials in their rights. Neither class was entitled to more, and these three officials were attempting honestly to see that such rights were preserved to each. Neither the defendant, Chrisman, nor the defendant, Oser, nor

the defendant, Adams, did more than he believed to be necessary in the preservation of peace and order, honestly believing that the laws of the State were being violated. Neither has threatened nor is now threatening to unjustly prosecute the plaintiffs or any other member of their group, or to do anything that will deprive them of their rights under the Constitution and laws of the United States. The remaining officials are ready and willing to do their duty as law-enforcing officials in the enforcement of the laws, regardless of whom it may affect.

No disturbance of any kind had occurred in Connersville or Fayette County since the trial of Trent and McKee in September, 1940, until April 6 of this year. This court found that equity did not require the issuance of a temporary injunction and, while the evidence on final hearing was much more extensive than that on the hearing on application for a temporary injunction, yet, no evidence was adduced upon final hearing which would justify the issuance of an injunction unless it was that which had to do with the occurrence of April 6. It will be recalled that each of the seventy-five (75) members arrested on that date and afterwards indicted by the grand jury of Fayette County was a resident of a state other than Indiana; that they met in Cincinnati, Ohio, a distance of approximately sixty (60) miles from Connersville, in accordance with a plan prearranged by zone servant, Rainbow, traveled to that city and began their activities in parts of the city which had theretofore been assigned to them by their zone servant. It may be significant that Sunday, especially Palm Sunday, was selected to again begin their activities in that community, after not having been active therein for many months. It is well known that that particular Sunday is more sacred to many people than any other Sunday, with the possible exception of Easter Sunday. It may also be significant that Connersville was chosen in preference to other places much closer to their meeting place. Significance may also attach to the fact that a temporary injunction in this case had been denied, that no disturbance had occurred subsequent thereto, and that a pretrial conference had been called for the purpose of discussing the issues, the stipulation of

facts, and the date for final hearing. The date of the pre-trial conference had been fixed for April 11, and the parties notified shortly before April 6.

It must be kept in mind that the activities of this group on April 6 were planned, supervised and directed by the plaintiff, Rainbow, the zone servant; that he had attended the trial of Trent and McKee and knew of the feeling of the citizens of Connersville as to the continued activities of Jehovah's witnesses in that city; that he knew of the previous disturbances in that city occasioned by their activities; that he knew of the pendency of this action and of the refusal of this court to issue a temporary injunction; that he, and many of the group that accompanied him to Connersville on that date, knew that this case was to be scheduled for final hearing within a short time. The conclusion is inescapable that he, and many others who accompanied him on that trip, knew, or had reason to believe, that trouble would be encountered by them, especially going in such large numbers, and on Palm Sunday.

Under the circumstances, should this court, sitting as a court of equity, interfere with the state and county officials in the enforcement of the criminal laws of the state, and in the discharge of their duties as they see them? We think not.

In the case of Fenner *v.* Boykin, 271 U. S. 240; 46 S. Ct. 492; 70 L. Ed. 927, the Supreme Court said:

"Ex Parte Young, 209 U. S. 123 and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statutes, unless it plainly appears that this course would not afford adequate protec-

tion. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court. Hygrade Provision Co. *v.* Sherman, 266 U. S. 497, 500."

In the case of Watchtower Bible & Tract Society, Inc. *v.* City of Bristol, 24 F. Supp. 57, affirmed without opinion in 305 U. S. 572, the facts were somewhat similar to those in the instant case. In that case, the court said:

"However, equity will ordinarily not interfere to prevent the enforcement of a criminal action even though unconstitutional. To justify interference there must be circumstances presented showing clearly that an injunction is necessary in order to afford adequate protection. • • • In the instant case, if the statute is misapplied or in conflict with the Federal Constitution, these questions can be raised in the criminal prosecution trial where there is ample opportunity for a review of the federal questions presented. • • • If a federal question is presented, they may appeal to the Supreme Court of the United States. The only injury that can be found from this bill of complaint is that the complainants will not be free to go about the countryside pursuing their work of preaching their doctrine and distributing their literature. There is no irreparable damage which warrants equitable relief. • • •

"The contention that an equity court has jurisdiction because the statute is null and void as abridging the freedom of speech, the press and religion or an unreasonable exercise of police power, are not supported by bill or affidavits. The general police powers are reserved to the states and the power to protect life and public safety, to preserve good order and the public morals, and to protect the property of its citizens, is within the limits of the states' dominion by any legislation appropriate to that end and which does not encroach upon the rights guaranteed by the Constitution. • • •

"Retention by the states of the police power necessary for their internal government has long been recognized. * * * In Whitney *v.* California, supra, the court pointed out that the 'equal protection clause does not take from a state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary; and that one who assails the classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

In the more recent case of Beal, County Attorney, et al. *v.* Missouri Pacific Railroad Corporation, 312 U. S. 45, that court approved and followed the principle announced in the case of Fenner *v.* Boykin, supra, and said further:

"No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. * * *

"This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether the act complained of is lawful or unlawful. * * * The federal courts are without jurisdiction to try alleged criminal violations of state statutes. The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this court if such construction or application is appropriately challenged on constitutional grounds. Hygrade Provision Co. *v.* Sherman, supra; Fenner *v.* Boykin, 271 U. S. 240."

See, also, Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, et al. *v.* The Pullman Company, et al., —— U. S. ——. (Decided March 3, 1941.)

The question of the validity of the statutes attacked is presented to the Supreme Court of Indiana in the case appealed to that court by the plaintiffs, Trent and McKee. If

those statutes were misconstrued and misapplied, or are in conflict with the Constitution or laws of the United States, those questions can be presented to that court in that case where there is ample opportunity for a review of all questions, including the federal questions presented, and, if an adverse ruling is had, then the Judicial Code provides an opportunity for ultimate review by the Supreme Court of the United States.

In considering the question of whether a federal court should issue an injunction against the enforcement of state criminal statutes, the Supreme Court, speaking through Mr. Justice Black, in the case of Watson, et al. *v.* Buck, et al., (not yet reported) decided on May 26, 1941, said:

"Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. 'No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.' Beal *v.* Missouri Pacific Railroad Corp., 312 U. S. 45, 49. A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. * * * For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately, in such numbers, and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified. * * * 'The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. * * * To

justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. * * * We have said that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions.' Spielman Motor Sales Co. *v.* Dodge, 295 U. S. 89, 95-96."

Such "exceptional circumstances" and "great and immediate" danger of irreparable loss are not here shown. It is clear that there are no exceptional circumstances in this case where the danger of irreparable loss or damage to the plaintiffs is great and immediate. It is equally clear that the equities are with the defendants. The complaint should be dismissed for want of equity, and judgment will be entered accordingly.

_____ _____,

Judge, United States Circuit Court of Appeals,

_____ _____,

Judge, United States District Court,

_____ _____,

Judge, United States District Court.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, et al., *Plaintiffs*,

vs.

LESTER HUNT, SCOTT ADAMS, et al., *Defendants*.

Filed June 12, 1941. Albert C. Sogemeier, Clerk.

Special Findings of Fact.

Pursuant to Rule 52 of the Rules of Civil Procedure, the court now states its Special Findings of Fact, upon final hearing, as follows, to-wit:

I.

That each of the plaintiffs, Grace Trent, Lucy McKee, Frank A. Julian, Donnie M. DeMars, Ernest Potter, Edwin Kleine, James T. Wood, Edward F. Edinger, and Jarry J. Duke, is a resident and citizen of the State of Indiana; that the plaintiff, John C. Rainbow, is a resident of the State of Ohio, but is not a citizen of the United States.

II.

That the defendant, Lester Hunt, is a resident and citizen of the State of Indiana and was, at the time of the commencement of this action and had been, for approximately four (4) years prior thereto, the duly elected, qualified and acting Sheriff of Fayette County, Indiana, the county in which the city of Connersville is located, but that his term of office as such sheriff expired on December 31, 1940, and at this time he holds no official position, having been succeeded by Joseph Oser, a resident and citizen of Fayette County, Indiana, who is the duly elected, qualified and acting sheriff of Fayette County at this time, he having entered upon his duties as such sheriff on January 1, 1941; that, upon motion

of plaintiffs and pursuant to Rule 25 (d) of the Rules of Civil Procedure, he was substituted for defendant Hunt as party defendant under order of this court; that the defendant, Scott Adams, is a resident and citizen of the State of Indiana, and was a deputy sheriff of Fayette County, Indiana, at the time of the final hearing in this case and had continuously been such deputy sheriff for approximately three (3) years prior thereto, but that he resigned as such on or about May 20, 1941, since which time he has held no official position in Fayette County or in Indiana; that the defendant, John J. Chrisman, is a resident and citizen of the State of Indiana, and is the regularly elected, qualified and acting prosecuting attorney of Fayette County, Indiana, and was such during the entire year of 1940, and is such at the present time; that the defendant, Edwin Johnston, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action was, and for approximately twelve (12) years prior thereto, had been the duly elected, qualified and acting judge of the Circuit Court of and for Fayette County, Indiana, but that his term of office as such judge expired on December 31, 1940, and at this time he holds no official position; that the defendant, Samuel D. Jackson, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action was, and had been for several months prior thereto, Attorney General of Indiana, but has been succeeded by George N. Beamer, a resident and citizen of Indiana, who, at this time, is Attorney General; that the defendant, M. Clifford Townsend, is a resident and citizen of the State of Indiana, and at the time of the commencement of this action, was, and had been for approximately four (4) years prior thereto, Governor of Indiana, but his term of office expired on January 13, 1941, at which time he was succeeded by the defendant, Henry F. Schricker, who is a resident and citizen of Indiana, and is Governor of Indiana at this time.

III.

That each of the defendants, Ralph Himelick, Roy Nelson, James R. Carter, Preston Gates, Claire Curry, and Raymond Steele, is a resident and citizen of Fayette County,

Indiana; that neither of said defendants holds any office, nor did either of them hold any office during the year 1940; that the defendant, Raymond Steele, was a member of the Americanism Committee of the American Legion during the year 1940, but that neither of the remaining defendants mentioned in this Finding was a member of such committee during said year; that neither of said defendants ever acted as a deputy sheriff of Fayette County, and that neither of them, with the exception of the defendant, Gates, was ever appointed as such, and he never acted in that capacity. At the time of the trial on final hearing Gates was unable to attend, because of physical disability, and was, at that time, and had been for a considerable length of time prior thereto, in the State of Florida, where he had gone to regain his health. He took no part in nor had anything to do with the arrest and prosecution of some members of the group of Jehovah's witnesses in Connersville on April 6 of this year.

IV.

That the defendants, M. Clifford Townsend, Henry F. Schricker, Samuel D. Jackson, and George N. Beamer, did not participate in any of the acts of which the plaintiffs complain, but are made parties defendant solely because of their official positions and because the validity of statutes of the State of Indiana is challenged.

V.

That the defendant, Ralph Himelick, is a lawyer practicing his profession in the city of Connersville, Fayette County, Indiana, and has been so practicing since his admission in 1914 to the bar, with the exception of six (6) years, during the twenties, when he was judge of the Circuit Court of Fayette County, having been elected to such office by the voters of that county; that during the summer of 1940, he was employed by a group of citizens of Connersville to assist in the prosecution of Grace Trent and Lucy McKee, two of the plaintiffs in this action, who had been charged by affidavit signed by the defendant, Scott Adams, along with Clemmie Evitts, Keziah Ullery and Frances

Laughlin, with the commission of an offense under the Riotous Conspiracy statute, one of the statutes under attack in this action; that said affidavit was sworn to before the said defendant, Chrisman, as prosecuting attorney, and was by him filed in the Circuit Court of Fayette County; that the said Himelick did assist in the prosecution of said case, but solely under the employment aforesaid, and did not act as a special prosecuting attorney, or in any other official capacity, in the prosecution of such case; that all of the acts done by the said Himelick, as shown by the evidence, were done by him as an attorney under the aforesaid employment in assisting in the prosecution of said case, and that he did nothing outside the trial of said case with reference to the things of which the plaintiffs complain; that he has not threatened to prosecute the plaintiffs, or either of them, in the future, or to in any manner interfere with their activities; and that he has not conspired with his co-defendants, or either of them, or any one else, to prosecute the plaintiffs in the future, or to in any manner interfere with their activities. That he took no part in nor had any connection with the arrest and prosecution of some members of the group for their activities in Connersville on April 6, 1941, nor did he conspire with any defendant or any other person to cause the arrest or prosecution of such members upon that or any other occasion.

VI.

That the plaintiffs in this action are members of a large group known as Jehovah's witnesses, and have each received a printed certificate bearing the signature of J. F. Rutherford, President of the Watchtower Bible & Tract Society, Inc., certifying that he or she is an ordained minister, such certificate being received by them at the time they received their first books and literature from said society, they having purchased such books and literature; that the said society publishes books and pamphlets which purport to disseminate Bible truths in various languages, some of which publications are "The Watchtower", "Consolation", "Armageddon", "Conspiracy Against Democracy", "Government—Hiding the Truth,—Why?", "The Final War",

"Universal War Near", "Warning", etc.; that said society has published more than three hundred and fifteen thousand (315,000) volumes of such literature and sells the same to its representatives, some of whom are these plaintiffs, at prices ranging from twenty-five (25) cents to three dollars and fifty cents ($3.50) per hundred, all depending upon the kind and character of the publication; that these plaintiffs and other members of their group advertise and distribute such of said literature as they may have ordered and purchased from such society; that these plaintiffs, as members of the group known as Jehovah's witnesses, and as ordained ministers, and all members of said group, go from house to house, and from place to place upon the streets and sidewalks of the various towns and cities and offer for sale, at prices ranging from five (5) cents to fifty (50) cents per copy, the various publications which they may have purchased from the Watchtower Bible & Tract Society, Inc., as aforesaid, the difference between the cost of such publications and the price for which they are sold being retained by the person making the sale; however, some of the literature may be distributed free to persons not willing or able to pay for the same, but the large majority is sold; that the majority of the group also carry with them, when going from house to house, and when upon the streets and sidewalks engaged in their work as ordained ministers, portable phonographs with records containing talks given by Rutherford and others, and containing quotations from the literature which they are distributing; that they play, or offer to play, such records to the persons upon whom they call at their homes, or to persons whom they meet upon the street or sidewalk, and offer to explain their belief and the teachings of their group. Some of the group are what is known as "full time" workers, spending all their time in the above activities; some spend only a part of their time in such activities; some have jurisdiction over several states, or parts of states, and are known as zone or regional servants. The plaintiff, John C. Rainbow, was a zone servant, and, as such, had jurisdiction over a portion of the western part of Ohio, the northern portion of Kentucky, and a portion of the eastern part of Indiana, including Fayette County, Indiana, the county in which

Connersville is located. He directs or advises the members within his zone and arranges for the activities of such members and designates the territory within his zone where the activities are to be carried on. Such arrangement was made by him for the activities in Connersville on April 6, and each member who participated therein was given specific directions by him as to the territory in which he or she was to carry on his or her activities, etc.

VII.

That the literature which is distributed by these plaintiffs and other members of their group is characterized by a discussion and interpretation of certain Bible passages, containing throughout a vein of prophecy to the effect that there will soon be a complete destruction of all our religious, commercial and political institutions, and a wholesale slaughter of the un-christian people, all of which will be committed by the invisible army of the Lord at the great "Battle of Armageddon"; that neither the literature nor these plaintiffs advocates that the creature man should commit any act or acts of force or violence to bring about this destruction; that these plaintiffs believe, and the literature teaches, that there will be established on earth, after such battle, a theocracy whereby God's Kingdom on Earth will be achieved; that these plaintiffs believe, and the literature teaches, every form of religion, as practiced today, is a "snare and a racket", and that whenever in their (plaintiffs') opinion the law of man conflicts with the law of God, as interpreted by them, the law of God, as thus interpreted, should be followed, and that, if their interpretation of the law of God is contrary to a decision of the Supreme Court of the United States interpreting and applying any law of our country, then, they will follow the law of God, as interpreted by them, rather than to follow the decision of the Supreme Court.

VIII.

That, according to the affidavit of Frederic William Franz, one of the directors of the Watchtower Bible & Tract Society, Inc., which publishes and sells the literature to plain-

tiffs and all other members of their group, and, under the *evidence upon* final hearing, "each one of Jehovah's witnesses are taught and believe that as ordained ministers of Jehovah God, and as a result of the covenant that they have entered into with Jehovah God, (Isaiah 61:1-3; Isaiah 43:10-12) that they must preach the Gospel by presenting the above printed books and booklets in the above manner, and if they fail to thus preach the Gospel, they shall forever suffer complete destruction and death at the hands of Almighty God." That the teaching of this principle is intended, upon the part of the directors and officials of the Watchtower Bible & Tract Society, Inc., to encourage the sale and distribution of its books and literature, and it does, in fact, encourage such sale and distribution, and as a consequence thereof, the sale and distribution of such books, literature, etc. are greatly increased. That one of the qualifications for membership in the group known as Jehovah's witnesses is that each witness engage in the sale and distribution of such books and literature.

IX.

That these plaintiffs, and many other members of their group, have, from time to time extending over a period of several months prior to the summer of 1940, sold and distributed to the residents of Connersville literature which they had purchased from the Watchtower Bible & Tract Society, Inc.; that they have gone from house to house, calling upon the residents of such city in an attempt to sell their literature, have played or offered to play records upon their phonographs when making such calls, and have explained or offered to explain their belief, including their belief that the American flag should not be saluted, that it was contrary to the teachings of Almighty God to salute the flag, to the residents upon whom they called; that they have also solicited people whom they would meet upon the streets of such city to purchase such literature or to listen to their phonograph records, and they have been so engaged for a considerable length of time prior to the summer of 1940; that they would assemble in the evening at the home of one of these plaintiffs or at the home of some other member of their group in Connersville for the

purpose of discussing the literature and their belief in the cause which they represented and in planning their future activities in such city. That such activities upon their part were offensive to a portion of the citizens of Connersville and many complaints were made by them to the defendants, Hunt, Adams and Chrisman, as sheriff, deputy sheriff and prosecuting attorney, respectively, as to such activities.

X.

That, during the month of June 1940, a group of Jehovah's witnesses, including the plaintiffs, Trent and McKee, were going from house to house in the city of Connersville, and were upon the streets of said city, selling and distributing, and attempting to sell and distribute the literature and publications which they had theretofore purchased from the Watchtower Bible & Tract Society, Inc.; that their activities in so doing were offensive to, and resented by, some of the residents of such city who reported the same to the defendant, Chrisman, as Prosecuting Attorney; that, in response thereto, said defendant, Chrisman, acting in his official capacity, made an investigation of such activities, and an investigation as to the contents of the literature and publications which were being distributed, to determine whether or not, in his opinion, there was involved a violation of any state statutes, and if so, whether or not the said plaintiffs, Trent and McKee, or any other members of their group, were violating such statutes.

XI.

That, among other things, it was charged by the residents of Connersville who complained to the defendant, Chrisman, that the plaintiffs, Trent and McKee, and other members of their group, did not believe in saluting the American flag and were so teaching their children and others upon whom they called who would listen to such teachings; that, as a result of these complaints, a group of citizens of that city, including the defendants, Nelson, Steele, Curry and Adams, as well as ex-sheriff Hunt, extended an invitation to the plaintiffs, Trent and McKee, and three other witnesses, Keziah Ullery, Clemmie Evitts and Margaret Tuell, to meet with them at the home of the Ameri-

can Legion on June 19, 1940, to discuss their activities and to examine the contents of the literature being sold and distributed by them and to hear the phonograph records played; that said witnesses accepted such invitation and attended such meeting at which certain records were played and the literature examined; that it was the opinion of the group of citizens that some of the literature being sold and distributed and some of the records being played were objectionable and that further sales and distribution thereof would lead to disorder and perhaps riot in the city, and the witnesses present were so advised; that said group of citizens advised the witnesses that it would be prudent for them to cease such activities and further sales and distribution of such literature as was pointed out by them to be objectionable; however, the witnesses present at such meeting gave such group of citizens no assurance that their activities would be any different in the future than what they had been in the past.

XII.

That, upon the following day, that is, on June 20, 1940, the plaintiffs, Trent and McKee, and four (4) other members of their group, to-wit: Frances Laughlin, Clemmie Evitts, Ruby Revelie and Keziah Ullery, continued their activities in the city of Connersville and, in the afternoon of that day, the defendants, Nelson, Carter and Gates, went to the part of the city in which these witnesses were canvassing and again asked them to refrain from advocating certain of their beliefs, such as that our government is about to be destroyed by force, that it is wrong to salute the American flag, and such other teachings as they pointed out were objectionable to the citizens of said city; that said witnesses refused to comply with this suggestion, and that said defendants so notified Hunt and Adams, sheriff, and deputy sheriff, respectively, who arrested said witnesses and placed them in jail.

XIII.

That, because of the various complaints made to him by the citizens of the city of Connersville, and, further, because of his honest belief that said witnesses were violating statutes of the State of Indiana, the defendant, Chrisman,

acting in his official capacity as Prosecuting Attorney, caused affidavits to be prepared and filed charging the witnesses mentioned in Finding No. XII with Flag Desecration in violation of a criminal statute of the State; that such affidavits were sworn to by the defendant, Adams, on June 21, 1940; that each of the witnesses thus charged was arraigned in open court, the defendant, Johnston, presiding as judge, and, with the exception of Trent and McKee, entered pleas of guilty to the charge of Flag Desecration, Trent and McKee pleading not guilty.

XIV.

That, the defendant, Chrisman, as prosecuting attorney, having made a further investigation, and being of the opinion that the plaintiffs, Trent and McKee, together with Frances Laughlin, Clemmie Evitts and Keziah Ullery, had violated the Riotous Conspiracy statute of Indiana, prepared an affidavit which was sworn to by the defendant, Adams, on June 22, 1940, charging them with the violation of such statute, and bench warrant issued on the same day; that such warrant was served upon them by Hunt, as sheriff, on the same day that it was issued.

XV.

That, on June 26, 1940, the plaintiffs in this action, Trent and McKee, were arraigned in open court upon the charge of having violated the Riotous Conspiracy statute, entered pleas of not guilty, and each of their bonds were fixed at Three Thousand Dollars ($3000.00), in default of which they were each remanded to jail where they remained until August 1, 1940, when bond was provided and they were released therefrom; that they were tried to a jury upon the Riotous Conspiracy charge in the Fayette Circuit Court, the defendant, Johnston, presiding as judge, such trial being begun on September 18 and concluded on September 24, on which date the jury returned a verdict finding each of the defendants in that case, Trent and McKee, guilty, as charged; that judgment was duly rendered upon such verdict on September 25.

XVI.

That, on October 22, motion for a new trial was filed by each Trent and McKee, which said motion was overruled by the court on December 4, delay having been caused by the failure of counsel for the said Trent and McKee to appear at the time fixed for oral argument upon three different occasions; that said Trent and McKee appealed their conviction to the Supreme Court of Indiana, notice of such appeal and acknowledgment of service thereof being under date of December 9, and each defendant in that case was released under bond pending such appeal on December 11, and they are now at liberty under such bond; that the transcript is now being prepared, and the appeal is now pending before the Supreme Court of Indiana, which court has exclusive jurisdiction over all appeals from judgments of the various circuit courts of the state in criminal cases; that the question of the validity or constitutionality of the statutes in question is presented to the Supreme Court of Indiana in that case for determination. That none of the defendants, state officials, county officials or laymen, has delayed the appeal in any manner, nor have they or any of them sought in any manner to prevent the prosecution of the appeal or to delay its early consummation.

XVII.

That the evidence fails to disclose any activities upon the part of Jehovah's witnesses in Connersville from December 27, 1940, the date of the filing of the complaint in this action, and for a considerable length of time both prior and subsequent thereto, until the morning of Sunday, April 6, 1941. Neither does the evidence disclose any threat or threats on the part of the defendants, the chief of police, William Traylor, or any other citizen or citizens of Connersville, or of Fayette County, to interfere with their activities during all that time, and no action was taken by any of the defendants, the chief of police, or any other person or persons, to interfere with their activities in said city and county following the disturbance in the year 1940 until April 6 of this year.

XVIII.

That, as heretofore found, John C. Rainbow, of Cincinnati, Ohio, was a zone servant of Jehovah's witnesses in April 6 of this year, and had been such servant for a considerable length of time prior thereto; that, as such zone servant, he supervised and directed their activities within the territory over which he had jurisdiction, as set forth in Finding No. 6; that, prior to said date, he laid plans for activities in Connersville by members who were residents of places other than Connersville and other than the State of Indiana, although there were members residing in and near Connersville at that time, such activities to be prior to the date of the final hearing in this cause; that, pursuant to such plan, he arranged for a large number of the group to assemble in a room known as Kingdom Hall, 110 East 8th Street, Cincinnati, Ohio, early on Sunday morning, April 6, for the purpose of traveling to Connersville, Indiana, a distance of approximately sixty (60) miles, to resume their activities; that prior to such meeting in Cincinnati, the said Rainbow had prepared, or caused to be prepared, on pieces of cardboard, a number of plats showing and designating the streets in various parts of the city of Connersville, each plat representing a different section of said city; that these plats were prepared in advance for the purpose of distribution among the members thus to assemble, thereby assigning to the various members certain territory represented on said plat for their respective activities, that is, the member was directed by Rainbow to conduct his or her activities within the territory shown upon the plat given to such member; that, as a result of this arrangement or plan, seventy-five (75) members, neither of whom was a resident of Indiana nor belonged to the company of Jehovah's witnesses to which those in Connersville belonged, but many of whom had attended the trial of Trent and McKee in Connersville during the latter part of September, 1940, and had knowledge that a large portion of the citizens of that city resented their activities therein, especially their teaching that religion, as practiced by them and their churches, was a snare and a racket, and that it was wrong to salute

the American flag, met in the room theretofore designated as a meeting place in Cincinnati; that such members were assigned territory in Connersville by the said Rainbow, given a plat which indicated the territory to which they had been assigned, and directed by him to proceed to Connersville and begin their activities in such territory; that there were men and women, boys, girls and children among the group thus assembled, and their ages ranged from two and a half (2½) years to more than seventy (70) years.

XIX.

That the day thus selected by the said Rainbow for the activities in Connersville was Palm Sunday, and the time at which these seventy-five (75) members reached Connersville and began their activities was the time when the people of that city were going to their respective churches for the purpose of worship, or were already in attendance at the church of their choice; that some of the male members of the group drove to the district assigned to them and their family, but remained in their automobiles and permitted their wives and small children in many instances to call from house to house in an effort to explain their views and sell their literature or to play records expounding their views upon the phonograph which they took with them; that their activities were similar to the activities of all members of their group, as set forth in Finding No. 6; that such activities were offensive to many of the citizens of Connersville, especially because of the fact that it was Palm Sunday; that many complaints were made by such citizens by telephone and in person to the prosecuting attorney and the sheriff of Fayette County, to the chief of police of Connersville, and to the Mayor of that city; that there were indications of another outburst of violence in the city, and, believing that the criminal laws of the state had been violated by members of the group, the defendant, Chrisman, acting in his official capacity as prosecuting attorney, caused affidavits to be prepared and filed against the members thus participating in these activities, charging them with the violation of criminal statutes of the state; that warrants were issued,

and Sheriff Oser and his deputy, defendant, Adams, acting in their respective official capacity, served such warrants by arresting such members and confining them until bond, which was fixed, had been provided, with the exception of the children, who were not so confined.

XX.

That on April 9, 1941, the grand jury of Fayette County was legally impaneled and investigated the occurrence of the previous Sunday; that, as a result of its investigation, an indictment in three (3) counts was returned against the members who participated in the previous Sunday's activities, charging them with a violation of the criminal laws of the State; that the indictment was dismissed as to many of the members because of their infancy or tender age; that the remaining defendants were brought into court on April 10 and advised of the charge and of their rights to be represented by counsel, etc., and, upon their suggestion that they desired counsel, the case was continued until April 12, when they were all released upon bond. No further action has been taken in that case.

XXI.

That, at the time the plaintiff and zone servant, Rainbow, planned and directed the activities of the group in Connersville on April 6, he knew of the feeling of the citizens of that city as to their continued activities in that vicinity, he knew of the previous disturbances in that city occasioned by their activities, he knew of the trial, conviction and sentence of plaintiffs Trent and McKee, having attended some of the sessions of the court during that trial, he knew of the pendency of this action and of the refusal of this court to grant a temporary injunction, he knew that this case was to be scheduled for final hearing within a short time; that this information was known also to many of the seventy-five (75) members who made the trip to Connersville on April 6, many of them also having attended the trial of Trent and McKee; that none of the seventy-

five (75) members thus making the trip were residents of Indiana, but were residents of West Virginia, Ohio, or Kentucky; that the said Rainbow was among the seventy-five (75) members who made the trip and directed their activities and he was also among those arrested on that day; that the said Rainbow, and the members who planned the trip to Connersville and executed those plans, knew at all times that Connersville was a "hot spot", as stated by one of them in a letter to his family while confined in jail, and that they would probably be arrested by the authorities if they resumed their activities on Palm Sunday; that such activities were resumed at that time and under those circumstances for the purpose of further creating dissension, causing their arrest and thus enabling plaintiffs to show, upon the final hearing in this case, that their activities had been interrupted, etc., and was not because of their desire to practice their religion and to thus worship God.

XXII.

The court finds that the troubles which occurred in Connersville on Palm Sunday, April 6, 1941, were deliberately brought about by the Jehovah's witnesses; that said Jehovah's witnesses selected Connersville because it was, in their language, "a hot spot" and that greater advertisement would come to them by reason of meetings in said city where the heated clashes between citizen and Jehovah's witnesses would be most likely to occur; that the business of the Watchtower Bible and Tract Society, Inc., is commercial; that it publishes or sells tracts from which it and the salaried officers of it and Jehovah's witnesses are paid; that the witnesses who preach God's word also sell this literature published by the Watchtower Bible and Tract Society and both they and the Watchtower Bible and Tract Society profit from such sales; that there was an element of advertisement and salesmanship in the action of the Jehovah's witnesses in coming to Connersville, April 6, and it is fairly inferable that they also came to help make out a case of irreparable injury and molestation of their right of worship and to make evidence which might be used to support the instant suit.

XXIII.

That, upon the prosecution and trial of the case of Trent and McKee in the Circuit Court, the defendants, Hunt, Adams, Chrisman and Johnston, acted only in their respective official capacities and performed such duties only as were required of them under their oaths; that the evidence fails to show that either of such defendant officials was in a conspiracy with the others, or either of them, or with any one else, to deprive the plaintiffs of their rights under the Constitution or laws of the United States, or that they threatened or are at this time threatening to unlawfully prosecute these plaintiffs or any other members of Jehovah's witnesses who may be found distributing any of the aforesaid literature in Fayette County; that, since the trial of that case, the defendants, Hunt, Johnston and Adams, have ceased to be officials, and neither Hunt nor Johnston took any part in the prosecution of the members of Jehovah's witnesses for their activities on April 6 and that Adams acted only in his official capacity as deputy sheriff upon that occasion and all his acts were done in good faith in the performance of his official duties; that Joseph Oser, as successor of Hunt, as sheriff, has been, by order of this court, substituted as a party defendant for the defendant, ex-sheriff, Hunt, but the evidence fails to show that he has done anything except in his official capacity in good faith in order to prevent violence and to protect the welfare of such witnesses, as well as the citizens of Fayette County; that the said Oser is not in a conspiracy with the defendants, or either or any of them, to interfere with the activities of the plaintiffs or other members of their group or to deprive them of their rights under the Constitution or laws of the United States, nor has he threatened or at this time is he threatening to unlawfully prosecute them or any other member of their group who may be found distributing any of the aforesaid literature in Fayette County, but is acting only as an officer in good faith in the performance of his duties as such official. That William Traylor is, at this time, and was, on April the 6th of this year, the chief of police of the city of Connersville, and, that, as such chief of police, he, and some of the policemen of the

city of Connersville, assisted in the arrest of those members of Jehovah's witnesses who were thus arrested on that day; that he is not a party to this action and has done nothing, except in his official capacity, and that all acts done by him in such capacity were done in good faith in order to prevent violence and to protect the welfare of such witnesses, as well as the citizens of Connersville and Fayette County; that the said Traylor is not in a conspiracy with the defendants, or either or any of them, to interfere with the activities of the plaintiffs or any member or members of their group, but is acting only in good faith in the performance of his official duties. That the evidence fails to show that the defendants, Nelson, Carter, Gates, Curry, and Steele, have conspired together, or that either has conspired with the others, or either of them, or with any one else, for the purpose of prosecuting these plaintiffs, or any other members of Jehovah's witnesses for their activities as such members, nor are they, or either of them, threatening to prosecute them if they may be found distributing their literature as aforesaid, nor are they, or either of them, as shown by the evidence, in a conspiracy among themselves, or with any other person or persons, which had, for its object, the deprivation of the constitutional or legal rights of the plaintiffs. These last named defendants have never held any official positions insofar as the evidence discloses, and all acts done by them were done as individuals.

XXIV.

That the evidence fails to show that the plaintiffs and other members of their group, or either or any of them, will suffer irreparable damages or injuries unless an injunction is issued in this case.

——— ———,

Judge, United States Circuit Court of Appeals.

——— ———,

Judge, United States District Court.

——— ———,

Judge, United States District Court.

—, 1941.

Conclusions of Law.

Upon the above and foregoing Special Findings of Fact, the court now states its Conclusions of Law as follows, to-wit:

I.

That the equities are with the defendants, and that the complaint herein should be dismissed for want of equity.

II.

That the defendants should recover of and from the plaintiffs their costs taxed herein at $—.

——— ———,
Judge, United States Circuit Court of Appeals.

——— ———,
Judge, United States District Court.

——— ———,
Judge, United States District Court.

—, 1941.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

No. 349 Civil.

GRACE TRENT, ET AL.,

vs.

LESTER HUNT, ET AL.

Filed June 12, 1941. Albert C. Sogemeier, clerk.

Before the Honorables Evan A. Evans, Circuit Judge, and Walter C. Lindley and Robert C. Baltzell, District Judges.

Final Decree.

This cause coming on now to be finally heard by the Court, and the parties appearing by their respective attorneys, and the Court having heard the evidence and argu-

ment of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and conclusions of law thereon, which special findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done. And the Court now files its memorandum herein.

And now upon the foregoing findings of fact and conclusions of law, it is

Ordered, Adjudged and Decreed by the Court:

1. That the plaintiffs' bill of complaint be, and the same is, hereby dismissed for want of equity.

2. That the defendants recover of and from the plaintiffs their costs herein, taxed at $—.

——— ———,
Circuit Judge.
——— ———,
District Judge.
——— ———,
District Judge.

APPENDIX C.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

No. 349 Civil.

GRACE TRENT, ET AL.,

vs.

LESTER HUNT, ET AL.

Before the Honorables Evan A. Evans, Circuit Judge, Walter C. Lindley and Robert C. Baltzell, District Judges.

This cause having been submitted to the Court upon plaintiffs' application for an interlocutory injunction, and the

parties appearing by their respective attorneys, and the Court having heard the evidence and argument of counsel and being sufficiently advised in the premises, now pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and states its conclusions of law thereon, which special findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done. And the Court now files its memorandum herein.

And now upon the foregoing findings of fact and conclusions of law,

It Is Ordered, Adjudged and Decreed by the Court that the plaintiffs' application for an interlocutory injunction be, and the same is, hereby denied.

____ ____,
Circuit Judge.
____ ____,
District Judge.
____ ____,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, ET AL., *Plaintiffs,*

vs.

LESTER HUNT, SCOTT ADAMS, ET AL., *Defendants.*

Special Findings of Fact.

Pursuant to Rule 52 of the Rules of Civil Procedure, the court now states its Special Findings of Fact, as shown by the affidavits filed, and the oral testimony presented at the hearing on January 13, 1941 upon the motion of plain-

tiffs for an interlocutory injunction in the above entitled cause, as follows, to-wit:

I.

That each of the plaintiffs, Grace Trent, Lucy McKee, Frank A. Julian, Donnie M. DeMars, Ernest Potter, Edwin Kleine, James T. Wood, Edward E. Edinger, and Harry J. Duke, is a resident and citizen of the State of Indiana; that the plaintiff, John C. Rainbow, is a resident and citizen of the State of Ohio.

II.

That the defendant, Lester Hunt, is a resident and citizen of the State of Indiana and was, at the time of the commencement of this action, and had been for approximately four (4) years prior thereto, the duly elected, qualified, and acting sheriff of Fayette County, Indiana, the county in which the City of Connersville is located, but that his term of office as such sheriff expired on December 31, 1940, and he holds no official position at this time; that the defendant, Scott Adams, is a resident and citizen of the State of Indiana and is a deputy sheriff of Fayette County, Indiana, and has been such for approximately three (3) years; that the defendant, John J. Chrisman, is a resident and citizen of the State of Indiana, and is the regularly elected, qualified, and acting Prosecuting Attorney of Fayette County, Indiana, and was such during the entire year of 1940; that the defendant, Edwin Johnston, is a resident and citizen of the State of Indiana and was, at the time of the commencement of this action, and had been for approximately twelve (12) years prior thereto, the duly elected, qualified, and acting Judge of the Circuit Court of and for Fayette County, Indiana, but that his term of office as such judge expired on December 31, 1940, and he holds no official position at this time; that the defendant, Samuel D. Jackson, is a resident and citizen of the State of Indiana, and was, at the time of the commencement of this action, and had been for several months prior thereto, Attorney General of Indiana, but has been succeeded by George N. Beamer, a resident and citizen of Indiana, who,

at this time, is Attorney General; that the defendant M. Clifford Townsend, is a citizen and resident of the State of Indiana, and was, at the time of the commencement of this action, and had been for approximately four (4) years prior thereto, Governor of Indiana, but that his term of office expired on January 13, 1941, at which time he was succeeded by the defendant Henry F. Schricker, who is a resident and citizen of Indiana, and is the Governor of Indiana at this time.

III.

That each of the defendants, Ralph Himelick, Roy Nelson, James R. Carter, Preston Gates, Claire Curry and Raymond Steele, is a resident and citizen of Fayette County, Indiana; that neither of said defendants holds any office, nor did either of them hold any office during the year 1940; that the defendant, Raymond Steele, was a member of the Americanism Committee of the American Legion during the year 1940, but that neither of the remaining defendants mentioned in this Finding was a member of such committee during said year; that neither of said defendants ever acted as a deputy sheriff of Fayette County, and that neither of them, with the exception of the defendant Gates, was ever appointed as such, and he never acted in that capacity.

IV.

That the defendants, M. Clifford Townsend, Henry F. Schricker, Samuel D. Jackson and George N. Beamer did not participate in any of the acts of which the plaintiffs complain, but are made parties defendant solely because of their official positions, and because the validity of statutes of the State of Indiana is challenged.

V.

That the defendant, Ralph Himelick, is a lawyer practicing his profession in the City of Connersville, Fayette County, Indiana, and has been so practicing since his admission to the bar in 1914, with the exception of six (6) years during the twenties when he was Judge of the Circuit Court of Fayette County, having been elected to such office

by the voters of that county; that, during the summer of 1940, he was employed by a group of citizens of Connersville to assist in the prosecution of Grace Trent and Lucy McKee, two of the plaintiffs in this action, who had been charged by affidavit signed by the defendant, Scott Adams, along with Clemmie Evitts, Keziah Ullery and Frances Laughlin, with the commission of an offense under the Riotous Conspiracy statute, one of the statutes under attack in this action; that said affidavit was sworn to before the said defendant, Chrisman, as Prosecuting Attorney, and was by him filed in the Circuit Court of Fayette County; that the said Himelick did assist in the prosecution of said case, but solely under the employment aforesaid, and did not act as a special prosecuting attorney or in any other official capacity in the prosecution of said case; that all of the acts done by the said Himelick, as shown by the evidence, were done by him as an attorney under the aforesaid employment in assisting in the prosecution of said case, and that he did nothing outside the trial of said case with reference to the things of which the plaintiffs complain; that he has not threatened to prosecute the plaintiffs, or either of them, in the future, or in any manner interfere with their activities; and that he has not conspired with his co-defendants, or either of them, or any one else, to prosecute the plaintiffs in the future, or to in any manner interfere with their activities.

VI.

That the plaintiffs in this action are members of a large group known as Jehovah's witnesses, and have each received a printed certificate signed by J. F. Rutherford, President of the Watchtower Bible & Tract Society, Inc., certifying that he or she is an ordained minister; that the said Society publishes books and pamphlets which purport to disseminate Bible truths in various languages, some of which publications are "The Watchtower", "Consolation", "Armageddon", "Conspiracy against Democracy", "Government—Hiding the Truth, Why?", "The Final War", "Universal War Near", "Warning", etc.; that said society has published more than 315,000 volumes of such literature,

and sells the same to its representatives, some of whom are these plaintiffs, at prices ranging from twenty-five (25) cents to three dollars and fifty cents ($3.50) per hundred, all depending upon the kind and character of the publication; that these plaintiffs advertise and distribute such of said literature as they may have ordered and purchased from such society; that the manner of worship of these plaintiffs, as members of the group known as Jehovah's witnesses, and as ordained ministers, and all members of said group, is to go from house to house and from place to place upon the streets and sidewalks of the various towns and cities and offer for sale at prices ranging from five (5) cents to fifty (50) cents per copy the various publications which they may have purchased from the Watchtower Bible & Tract Society, Inc., as aforesaid, the difference between the cost of such publications and the price for which they are sold being retained by the person making the sale; however, some of the literature may be distributed free to persons not willing or able to pay for the same, but the large majority is sold; that the majority of the group also carry with them, when going from house to house, and when upon the streets and sidewalks, engaged in their work as ordained ministers, portable phonographs with records containing talks given by Rutherford and others, and containing quotations from the literature which they are distributing; that they play or offer to play such records to the persons upon whom they call at their homes, or to persons whom they meet upon the street or sidewalk, and offer to explain their belief and the teachings of their group.

VII.

That the literature which is distributed by these plaintiffs and other members of their group is characterized by a discussion and interpretation of certain Bible passages, containing throughout a vein of prophecy to the effect that there will soon be a complete destruction of all our religious, commercial and political institutions, and a wholesale slaughter of the un-Christian people, all of which will be committed by the invisible army of the Lord at the great "Battle of Armageddon"; that neither the literature nor

these plaintiffs advocate that the creature man should commit any act or acts of force or violence to bring about this destruction; that these plaintiffs believe, and the literature teaches, that there will be established on earth, after such battle, a theocracy whereby God's Kingdom on Earth will be achieved; that these plaintiffs believe, and the literature teaches, that all forms of religion, as practiced today, is a "snare and a racket", and that whenever in their (plaintiffs') opinion the law of man conflicts with the law of God, as interpreted by them, the law of God, as thus interpreted, should be followed, and that, if their interpretation of the law of God is contrary to a decision of the Supreme Court of the United States interpreting and applying any law of our country, then they will follow the law of God, as interpreted by them, rather than to follow the decision of the Supreme Court, all as testified by one of the plaintiffs in this action.

VIII.

That, according to the affidavit of Frederic William Franz, one of the directors of the Watchtower Bible & Tract Society, Inc., which publishes and sells the literature to plaintiffs and all other members of their group, "each one of Jehovah's witnesses are taught and believe that as ordained ministers of Jehovah God, and as a result of the covenant that they have entered into with Jehovah God, (Isaiah 61:1-3; Isaiah 42:10-12) that they must preach the Gospel by presenting the above printed books and booklets in the above manner, and if they fail to thus preach the Gospel, they shall forever suffer complete destruction and death at the hands of Almighty God."

IX.

That these plaintiffs, and many other members of their group, have, from time to time, extending over a period of several months prior to the commencement of this action, sold and distributed to the residents of Connersville literature which they had purchased from the Watchtower Bible & Tract Society, Inc.; that they have gone from house to house calling upon the residents of such city in an attempt

to sell their literature, have played or offered to play records upon their phonographs when making such calls, and have explained, or offered to explain, their belief to the residents upon whom they have called; that they have also solicited people whom they would meet upon the streets of such city to purchase such literature or listen to their phonograph records; and they had been so engaged for a considerable length of time prior to the commencement of this action; that they would assemble in the evening at the home of one of these plaintiffs or at the home of some other member of their group in Connersville for the purpose of discussing the literature and their belief in the cause which they represented and in planning their future activities in such city.

X.

That, during the month of June, 1940, a group of Jehovah's witnesses, including the plaintiffs, Trent and McKee, were going from house to house in the city of Connersville and were upon the streets of said city, selling and distributing, and attempting to sell and distribute the literature and publications which they had theretofore purchased from the Watchtower Bible & Tract Society, Inc.; that their activities in so doing were offensive to, and resented by, some of the residents of such city who reported the same to the defendant, Chrisman, as Prosecuting Attorney; that, in response thereto, said defendant, Chrisman, acting in his official capacity, made an investigation of such activities and an investigation as to the contents of the literature and publications which were being distributed to determine whether or not, in his opinion, there was involved a violation of any State statutes, and if so, whether or not the said plaintiffs, Trent and McKee, or any other members of their group, were violating such statutes.

XI.

That, among other things, it was charged by the residents of Connersville, who complained to the defendant, Chrisman, that the plaintiffs, Trent and McKee, and other members of their group, did not believe in saluting the American flag and were so teaching their children and

others upon whom they called who would listen to such teachings; that, as a result of these complaints, a group of citizens of that city, including the defendants, Nelson, Steele, Curry, Hunt and Adams, extended an invitation to the plaintiffs, Trent and McKee, and three other witnesses, Keziah Ullery, Clemmie Evitts and Margaret Tuell, to meet with them at the home of the American Legion on June 19, 1940, to discuss their activities and to examine the contents of the literature being distributed by them and to hear the phonograph records played; that said witnesses accepted such invitation and attended such meeting at which certain records were played and the literature examined; that it was the opinion of the group of citizens that some of the literature being distributed and some of the records played were objectionable, and that further distribution thereof would lead to disorder and perhaps riot in the city, and the witnesses present were so advised; that said group of citizens advised the witnesses that it would be prudent for them to cease such activities and further distribution of such literature as was pointed out by them to be objectionable; however, the witnesses present at such meeting gave such group of citizens no assurance that their activities would be any different in the future than what they had been in the past.

XII.

That, upon the following day, that is, on June 20, 1940, the plaintiffs, Trent and McKee, and four (4) other witnesses, to-wit: Frances Laughlin, Clemmie Evitts, Ruby Revelie and Keziah Ullery, continued their activities in the city of Connersville, and, in the afternoon of that day, the defendants, Nelson, Carter and Gates, went to the part of the city in which these witnesses were canvassing and again asked them to refrain from advocating certain of their beliefs, such as, that our government is about to be destroyed by force, that it is wrong to salute the American flag, and such other teachings as they pointed out were objectionable to the citizens of said city; that said witnesses refused to comply with this suggestion, and that said defendants so notified the defendants, Hunt and Adams, who arrested said witnesses and placed them in jail.

XIII.

That, because of the various complaints made to him by the citizens of the city of Connersville, and, further, because of his honest belief that said witnesses were violating statutes of the State of Indiana, the defendant, Chrisman, acting in his official capacity as Prosecuting Attorney, caused affidavits to be prepared and filed charging the witnesses mentioned in Finding No. XII with Flag Desecration in violation of a criminal statute of the state; that such affidavits were sworn to by the defendant, Adams, on June 21, 1940; that each of the witnesses thus charged was arraigned in open court, the defendant, Johnston, presiding as judge, and, with the exception of Trent and McKee, entered pleas of guilty to the charge of Flag Desecration, Trent and McKee pleading not guilty.

XIV.

That the defendant, Chrisman, as Prosecuting Attorney, having made a further investigation and being of the opinion that the plaintiffs, Trent and McKee, together with Frances Laughlin, Clemmie Evitts and Keziah Ullery, had violated the Riotous Conspiracy statute of Indiana, prepared an affidavit which was sworn to by the defendant, Adams, charging them with the violation of such statute on June 22, 1940, and bench warrant duly issued on the same day; that such warrant was served upon them by the defendant, Hunt, as Sheriff, on the same day that it was issued.

XV.

That, on June 26, 1940, the plaintiffs in this action, Trent and McKee, were arraigned in open court upon the charge of having violated the Riotous Conspiracy statute, entered pleas of not guilty, and each of their bonds was fixed at three thousand dollars ($3000.00), in default of which they were each remanded to jail where they remained until August 1, 1940, when bond was provided and they were each released therefrom; that they were tried to a jury upon the Riotous Conspiracy charge in the Fayette Circuit Court, the defendant, Johnston, presiding as judge, such trial being begun on September 18 and concluded on September

24, on which date the jury returned a verdict finding each of the defendants in that case, Trent and McKee, guilty, as charged; that judgment was duly rendered upon such verdict on September 25.

XVI.

That, on October 22, motion for a new trial was filed by each Trent and McKee, which said motion was overruled by the court on December 4, delay having been caused by the failure of counsel for the said Trent and McKee to appear at the time fixed for oral argument upon three different occasions; that said Trent and McKee appealed their conviction to the Supreme Court of Indiana, notice of such appeal and acknowledgment of service thereof being under date of December 9, and each defendant in that case was released under bond pending such appeal on December 11, and they are now at liberty under such bond; that the transcript is now being prepared, and the appeal is now pending before the Supreme Court of Indiana, which court has exclusive jurisdiction over all appeals from judgments of the various circuit courts of the state in criminal cases; that the question of the validity or constitutionality of the Riotous Conspiracy statute is presented to the Supreme Court of Indiana in that case for determination.

XVII.

That the defendants, Hunt, Adams, Chrisman and Johnston, acted only in their official capacity and performed such duties only as were required of them under their oath; that the evidence fails to show that either of such defendant officials was in a conspiracy with the others, or either of them, or with any one else, to deprive the plaintiffs of their rights under the Constitution or laws of the United States, or that they threatened, or are at this time threatening, to prosecute these plaintiffs, or any other members of Jehovah's witnesses who may be found distributing any of the aforesaid literature in Fayette county; that the evidence fails to show that the defendants, Nelson, Carter, Cates, Curry and Steele, have conspired together, or that either has conspired with the others, or either of them, or with any one else, for the purpose of prosecuting these plaintiffs,

or any other members of Jehovah's witnesses for their activities as such members, nor are they, or either of them, threatening to prosecute them if they may be found distributing their literature as aforesaid, nor are they, or either of them, as shown by the evidence, in a conspiracy among themselves, or with any other person or persons, which has for its object the deprivation of the constitutional or legal rights of the plaintiffs, all as shown by the evidence adduced upon motion of plaintiffs for an interlocutory injunction in this action. These last named defendants have never held any official position insofar as the evidence discloses, and all acts done by them were done as individuals.

XVIII.

That the evidence fails to show that the plaintiffs and other members of their group, or either or any of them, will suffer irreparable damages or injuries unless an interlocutory injunction is issued pending final hearing.

——— ———,
Senior United States Circuit Judge.

——— ———,
United States District Judge.

——— ———,
United States District Judge.

Dated this 17 day of Mar., 1941.

Conclusions of Law.

Upon the above and foregoing Special Findings of Fact, the court now states its Conclusions of Law, as follows, to-wit:

I.

That the motion of the plaintiffs for an interlocutory injunction should be denied.

——— ———,
Senior United States Circuit Judge.

——— ———,
United States District Judge.

——— ———,
United States District Judge.

Dated this — day of —, 1941.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION.

Civil Action No. 349.

GRACE TRENT, LUCY MCKEE, et al., *Plaintiffs*,

vs.

LESTER HUNT, SCOTT ADAMS, et al., *Defendants*.

Memorandum.

Before: Evans, Circuit Judge, and Lindley and Baltzell, District Judges.

Per CURIAM.

The plaintiffs in this action are seeking to enjoin the defendants from enforcing three (3) certain criminal statutes in the State of Indiana, alleging "that each of the three above described state statutes is unconstitutional and void, as construed and applied by defendants against plaintiffs because, as so construed and applied, each of said statutes has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press, of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section."

Plaintiffs pray for an interlocutory injunction and have pressed the same; therefore, a statutory three-judge court was organized pursuant to the provisions of Section 266 of the Judicial Code (*28 USCA 380*). A hearing was had by such court upon the motion of plaintiffs for an interlocutory injunction, the evidence adduced consisting of affidavits filed by both the plaintiffs and the defendants, and by some oral testimony. It will not be necessary to restate the facts because, pursuant to Rule 52 of the Rules of Civil Procedure, there is filed simultaneously herewith a Special Findings of Fact, from which Findings the court has stated its Conclusions of Law. For the purposes of this Memor-

andum, it is sufficient to say that each plaintiff is a member of a large group known as Jehovah's witnesses and, during the month of June, 1940, they were engaged in their activities in Fayette County, Indiana, more especially in Connersville, the county seat of that county; that objection was made by some of the citizens of that city to such activities and, as a result thereof, affidavits were filed in the Fayette Circuit Court by the defendant, Chrisman, as Prosecuting Attorney, charging the plaintiffs, Trent and McKee, and other members of their group, with having violated certain criminal statutes of Indiana; that said Trent and McKee were tried to a jury in said circuit court upon a charge of having violated the Riotous Conspiracy statute, convicted, and sentenced to prison. An appeal was perfected by them to the Supreme Court of Indiana, the court that has exclusive jurisdiction over criminal appeals from circuit courts in the state. They were released on bond, and that appeal is now pending.

Jurisdiction is based upon a statute of the United States which says that "The district courts shall have original jurisdiction as follows: (14) Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute * * * of any State, of any right privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (28 USCA 41, (14). It is the contention of plaintiffs that the state statutes attacked by them are unconstitutional and void, as construed and applied by defendants, and that, therefore, they are being deprived of their rights under the Constitution and laws of the United States by the enforcement of such statutes in the manner in which they allege such statutes are being enforced and threatened to be enforced by the defendants. It is their position, therefore, that this court has jurisdiction under the provisions of the statute (28 USCA 41 (14)) and that it is not necessary to have diversity of citizenship, (which is not present) nor the jurisdictional amount of in excess of Three Thousand Dollars

($3000.) in controversy, in order that this court may acquire jurisdiction. With this position, we are in accord. Under the allegations of the complaint, this court has jurisdiction.

The three (3) statutes of Indiana, the validity of which is challenged by plaintiffs, are as follows:

(1) "Any person who, in any manner, for exhibition or display, shall place or cause to be placed any words, or figures, or numbers, or marks, or inscriptions, or pictures or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature whatever, upon any flag, standard, color or ensign of the United States, or shall expose, or cause to be exposed, to public view any such flag, standard, color or ensign of the United States upon which shall be printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed, any words or figures, or numbers or marks, or inscriptions, or pictures, or design, or device, or symbol, or token, or notice, or drawing, or any advertisement of any nature or kind whatever, or who shall expose to public view, or shall manufacture, or sell, or expose for sale, or have in possession for sale or for use, any article or thing or substance, being an article of merchandise or a receptacle of merchandise upon which shall have been printed, painted, or attached, or otherwise placed, a representation of any such flag, standard, color or ensign of the United States, to advertise, or call attention to, or to decorate, or to ornament, or to mark, or to distinguish the article or thing, on which shall be placed, or shall publicly mutilate, trample upon, or publicly deface, or defy, or defile, or cast contempt, either by words or act, upon any such flag, standard, color or ensign of the United States, shall be deemed guilty of a misdemeanor * * *." (*Burns' Indiana Statutes Anno.* 1933. Sec. 10-506)

(2) "If three (3) or more persons shall unite for the purpose of doing any unlawful act in the nighttime or for the purpose of doing any unlawful act while wearing white caps, masks or being otherwise disguised, they shall be deemed guilty of a riotous conspiracy, and, on conviction, shall each be imprisoned in the state prison not less than

two (2) years nor more than ten (10) years, and each be fined in any sum not exceeding two thousand dollars ($2000)." (*Burns' Indiana Statutes Anno.* 1933, Sec. 10-506)

(3) "It shall be unlawful for any person to advocate or incite, or to write, or, with intent to forward such purpose, to print, publish, sell or distribute any document, book, circular, paper, journal or other written or printed communication, in or by which there is advocated or incited the overthrow, by force or violence, or by physical injury to personal property, or by the general cessation of industry, of the government of the United States, of the state of Indiana, or all government." (*Burns' Indiana Statutes, Anno.* 1933, Sec. 10-1302)

This court is asked by the plaintiffs to temporarily enjoin the defendants, their agents, etc. from the enforcement of these three statutes pending final hearing, and, upon final hearing to "enter an order declaring said above described statutes invalid and void under the Fourteenth Amendment of the Federal Constitution", etc. It is not contended by plaintiffs that the defendants, Jackson, as Attorney General, Beamer, as his successor, Townsend, as Governor, or Schricker, as his successor and as present governor, took any part in or had any knowledge of the things of which they complain in their complaint. They are made defendants simply because of their official positions, and because the validity of the state statutes is challenged. Such defendants are not now threatening to enforce said statutes as against the plaintiffs, nor have they at any time in the past so threatened. The enforcement of such statutes is a part of the duties of the local officials. Of the local officials who were such at the time of the filing of the complaint and are defendants in this action, the term of the defendant, Hunt, as Sheriff, has expired, and the term of the defendant, Johnson, as circuit judge, has expired. Neither of these two defendants holds any official position at this time, nor has either of them held any official position in Fayette County since December 31 last. Since the evidence shows that all their acts were done in an official capacity and that they did nothing in their individual capacity, either singly

or in concert with others, in an attempt to deprive these plaintiffs of their rights under the Constitution and laws of the United States, and that they never threatened, nor are they now threatening to do anything that will so deprive them, there is no occasion to issue an injunction against them.

The defendants Himelick, Nelson, Carter, Cates, Curry and Steele, are private citizens of Connersville, neither of them having held any official position during the time in question, with the possible exception of Cates, who was named a deputy sheriff at one time, but who never qualified or acted as such. All of the acts done by them were done as individuals, and not as officials. The defendant, Himelick, is a lawyer, and assisted the prosecuting attorney in the prosecution of the plaintiffs, Trent and McKee, under the Riotous Conspiracy charge, but he was under private employment and was not acting as a deputy or special prosecuting attorney in the trial of that case. He did only the things which were required of him as an attorney to properly represent his client. Neither the defendant, Himelick, nor any of the other private citizen defendants in this action conspired together, or with any other person, or persons, to prosecute these plaintiffs, or any other member or members of their group, or to deprive them of their rights under the Constitution or laws of the United States. Neither of them has threatened, nor are they threatening at this time, to prosecute the plaintiffs or any other members of their group. The hearing fails to disclose any evidence which would warrant or justify the issuance of a temporary injunction against them, or either of them.

The two remaining defendants, Adams and Chrisman, continue as public officials, being deputy sheriff and prosecuting attorney, respectively, of Fayette County. The evidence discloses that these two defendants did nothing in the prosecution of Trent and McKee, except what they were required to do in their official capacity. If they erred in the performance of those duties, the evidence fails to show that such errors were the result of a conspiracy on their part to deprive these plaintiffs, or any other member or members of their group, of their rights under the Constitution and laws of the United States. Any errors that they

may have committed in the prosecution of that case are subject to review by the Supreme Court of Indiana. Neither of these defendants is threatening to prosecute these plaintiffs or other members of their group for any future activities. They have done nothing, and are threatening to do nothing, which would necessitate the issuance of an injunction against them, or either of them.

It is not necessary for us to determine, upon this hearing, the validity of the challenged statutes. It may be helpful, however, to observe that the question of the validity of at least one of the statutes, that is, the Riotous Conspiracy statute, is now being presented to the Supreme Court of Indiana in the case appealed to that court by the plaintiffs, Trent and McKee. If that statute was misconstrued and misapplied, or is in conflict with the Constitution or laws of the United States, those questions can be presented to that court in that case where there is ample opportunity for a review of all questions, including the federal questions presented, and if an adverse ruling is had, then the Judicial Code provides an opportunity for ultimate review by the Supreme Court of the United States.

In the case of *Fenner v. Boykin,* 271 U. S. 240; 46 S. Ct. 492; 70 L. Ed. 927, the Supreme Court said: "*Ex parte Young,* 209 U. S. 123, and following cases, have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. An intolerable condition would arise if, whenever about to be charged with

violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court. Hygrade Provision Co. *v.* Sherman, 266 U. S. 497, 500." This principle has been since approved and followed, and was approved and followed by the Supreme Court in the case of Watchtower Bible & Tract Society *v.* City of Bristol, 305 U. S. 572, where it affirmed, without opinion, the decision of a statutory three-judge court in the District of Connecticut, *24 F. Supp. 57.*

In a more recent case, that of Beal, County Attorney, et al. *v.* Missouri Pacific Railroad Corporation, in Nebraska, decided by the Supreme Court of the United States on January 20, 1941, that court approved and followed the principle announced in the case of Fenner *v.* Boykin, *supra,* and said further, "No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. * * * This is especially the case where the only threatened action is the prosecution in the state courts by state officers of an alleged violation of state law, with the resulting final and authoritative determination of the disputed question whether the act complained of is lawful or unlawful. * * * The federal courts are without jurisdiction to try alleged criminal violations of state statutes. The state courts are the final arbiters of their meaning and appropriate application, subject only to review by this court if such construction or application is appropriately challenged on constitutional grounds. Hygrade Provision Co. *v.* Sherman, *supra;* Fenner *v.* Boykin, 271 U. S. 240." See, also Railroad Commission of Texas, Lon A. Smith, Ernest O. Thompson, et al. *v.* The Pullman Company et al., decided by the Supreme Court of the United States on March 3, 1941.

The evidence adduced upon the hearing of the motion of plaintiffs for an interlocutory injunction shows no extraordinary circumstances where the danger of irreparable loss or damage to plaintiffs is great and immediate. The evi-

dence fails to show that there is even any threatened action or prosecution on the part of any state officer or any defendant.

The motion for an interlocutory injunction will be denied, and a judgment will be entered accordingly.

APPENDIX E.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY.

London—No. 64.

LOUIS BEELER, et al., *Plaintiffs*

v.

L. O. SMITH, Individually, and as Mayor of the City of Harlan, Ky., et al., *Defendants.*

Findings of Fact, Conclusions of Law and Judgment.

This cause having heretofore been heard upon the defendants' motion for an interlocutory injunction and a final hearing of the suit having been had upon proof introduced by the parties and the cause being submitted for final judgment to the undersigned, sitting as a District Court of Three Judges, and the Court being advised, makes the following Findings of Fact and Conclusions of Law upon the issues herein presented, to-wit:

Findings of Fact.

1. That the plaintiffs, Louis Beeler, Elmer Hopkins, Lyndell Carr, S. F. Lehman, M. L. Lehman and Elihu Hurst, are citizens and residents of the State of Kentucky and of the United States; that each of them is a member of an organization known as "Jehovah's witnesses" and as such, at the time of the institution of this action and prior thereto, each of them was a duly authorized representative of "Watch Tower Bible and Tract Society," a corporation engaged in printing and publishing various books, tracts, pamphlets, periodicals and magazines, which the plaintiffs and other members of the organization "Jehovah's witnesses", at the time of the institution of this action and

prior thereto, were engaged in distributing, selling and otherwise circulating on the streets and public places in the cities, towns and villages of Harlan County and other counties of the State of Kentucky and in distributing to the residents of the County of Harlan at their homes and elsewhere.

2. That the defendant L. O. Smith is the duly elected and qualified Mayor of the City of Harlan, Harlan County, Kentucky; that the defendant Daniel Boone Smith is the duly elected and qualified Commonwealth's Attorney in and for the District of the State of Kentucky which includes the city and county of Harlan; that the city of Harlan is a municipal corporation duly organized and existing under the laws of the State of Kentucky; that the defendant Harmon Noe is Chief of Police of the city of Harlan; that the defendant Lige Howard is the duly elected and qualified Judge of the Police Court of the city of Harlan; that the defendants Estle Giles and Ben F. Unthank are duly qualified and appointed members of the Police Department of the city of Harlan; that the defendant H. C. Caywood is the duly elected and qualified Sheriff of the county of Harlan, and that the defendant Hubert Meredith is the duly elected and qualified Attorney General of the State of Kentucky.

3. That prior to the institution of this action, on or about the first day of June, 1940, the defendants, other than the defendant Hubert Meredith, Attorney General, acting in their respective capacities as public officers of the city of Harlan, county of Harlan and State of Kentucky, arrested or caused to arrest, imprisonment and prosecution of the plaintiffs upon the charge or charges that by engaging in the distribution, sale and circulation of certain hereinafter described books, tracts, pamphlets, periodicals, magazines and other printed matter the defendants committed the crime of "sedition" in violation of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Ky. Statutes, §§ 1148a-1 to 1148a-14, inclusive), and they have since threatened, under color of said statute and by virtue thereof, to continue to so arrest, imprison and prosecute the plaintiffs and other members of the organization of "Jehovah's wit-

nesses" who may continue to so distribute such printed matter in Harlan County, Kentucky; that by so doing the defendants, other than Hubert Meredith, Attorney General, prevented the plaintiffs and others of "Jehovah's witnesses" from continuing to exercise the right to engage in, carry on or pursue their business or activities in circulating, selling or otherwise distributing such printed matter in Harlan County, Kentucky.

4. That the printed matter so distributed or proposed to be so distributed and circulated by the plaintiffs consists of the following books, tracts, pamphlets, periodicals, magazines and printed matter printed and published by Watch Tower Bible & Tract Society, Inc., to-wit: Book entitled "Salvation"; Book entitled "Deliverance"; Book entitled "Preservation"; Book entitled "Riches"; Book entitled "The Harp of God"; Book entitled "Religion"; Book entitled "Preparation"; Book entitled "Jehovah"; Book entitled "Creation"; Three-volume set of books entitled "Vindication"; 1940 Yearbook of "Jehovah's witnesses"; Book entitled "Government"; Book entitled "Enemies"; Two-volume set of books entitled "Light"; Book entitled "Prophecy"; Magazine entitled "Consolation", of date December 13, 1939; Magazine entitled "Consolation" of date April 17, 1940; Magazine entitled "Consolation" of date October 4, 1939; Magazine entitled "Consolation" of date April 17, 1940; six copies of magazine entitled "Consolation" of date, respectively, November 29, 1939; April 19, 1939; October 4, 1939; April 3, 1940; April 17, 1940, and May 29, 1940; Magazine entitled "The Watchtower" of date March 1, 1932; Magazine entitled "The Messenger" of date November, 1938; Magazine entitled "Consolation" of date January 10, 1940; Magazine entitled "Consolation" of date February 7, 1940; Printed Sheet entitled "Kingdom News" dated October 1939; Booklet entitled "Home and Happiness"; Book entitled "Choosing Riches or Ruin"; Book entitled "His Works"; Book entitled "Uncovered"; Book entitled "World Recovery"; Booklet entitled "The Final War"; Booklet entitled "Beyond the Grave"; Booklet entitled "Government and Peace"; Booklet entitled "Judge Rutherford Uncovers Fifth Column"; Booklet entitled "Armageddon, the greatest battle of all times; who

will survive?"; Booklet entitled "Government, Hiding the Truth, Why?"; Booklet entitled "Protection from those who seek to hurt or destroy me; How can I find it?"; Booklet entitled "Hereafter"; Booklet entitled "Safety"; Booklet entitled "Fascism or Freedom"; Booklet entitled "Loyalty; Questions and Answers, Whose Servant, Saluting a Flag; Last Days"; Booklet entitled "Refugees"; Booklet entitled "Warning"; Booklet entitled "What You Need"; Booklet entitled "Liberty"; Booklet entitled "Health and Life"; Booklet entitled "What Is Truth?"; Booklet entitled "Dividing the People"; Booklet entitled "Where Are the Dead?"; Booklet entitled "Universal War Near"; Booklet entitled "Favored People"; Booklet entitled "Supremacy"; Booklet entitled "Righteous Ruler"; Booklet entitled "Neutrality"; Booklet entitled "His Vengeance"; Booklet entitled "Face the Facts"; Booklet entitled "Conspiracy Against Democracy"; Booklet entitled "Cure"; Booklet entitled "Model Study No. 2"; Booklet entitled "Keys of Heaven"; Booklet entitled "Angels"; Booklet entitled "Who Is God?"; Leaflet advertising the broadcast of Judge Rutherford's Lecture "Government and Peace"; Printed sheet entitled "Informant" dated April, 1938; Printed sheet entitled "Informant" dated May, 1940; Two printed sheets of paper entitled "Informant" dated January, 1940; Printed sheet of paper entitled "Informant" dated February, 1940; Two different printed sheets entitled "Informant", dated March, 1940; Book entitled "1930 Year Book of the International Bible Students Association and Daily Texts and Comments"; Book entitled "The Finished Mystery—The Way to Life and Heaven"; Book entitled "Thy Kingdom Come"; Book entitled "The Battle of Armageddon"; Book entitled "Comfort for the Jews"; Book entitled "Photo-Drama of Creation"; Book entitled "Riches" printed in the Greek language; Book entitled "Creation", printed in the Greek language; Book entitled "Deliverance" printed in the Greek language; Book entitled "Enemies", printed in the Greek language; Booklet entitled "Angels" printed in the Polish language; Book entitled "What Is the Truth?", printed in the Polish language; Booklet entitled "Dividing the People", printed in the Polish language; Book entitled "Prosperity Sure";

Booklet entitled "A Testimony"; Booklet entitled "The Kingdom—The Hope of the World"; Book entitled "Advice for Kingdom Publishers"; Placard reading "Religion Is a Snare and a Racket", and Magazine entitled "Consolation" dated April 3, 1940, copies of all of which literature and publications are filed and identified herein as plaintiffs' exhibits numbers 2-93, inclusive, and defendants' exhibits numbers 1-3, inclusive.

5. That the plaintiffs are fairly representative of the class or group of persons residing in the state of Kentucky and carrying on similar business and activities known as "Jehovah's witnesses".

Conclusions of Law.

1. That the plaintiffs are entitled to maintain this action for and on behalf of themselves and all others embraced in the class or group of persons in Harlan County and the State of Kentucky known as "Jehovah's witnesses".

2. That this Court of Three Judges sitting pursuant to section 266 of the Judicial Code of the United States has jurisdiction of the parties and the subject matter of this action to restrain future arrests, imprisonment or prosecution of the plaintiffs or others of "Jehovah's witnesses" on account of the acts herein described under color of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Kentucky Statutes §§ 1148a-1 to 1148a-14).

3. That this Court is without jurisdiction to enjoin, restrain or otherwise interfere with prosecutions or other criminal proceedings pending in the Courts of the State of Kentucky under the indictments set out in the petition or otherwise instituted therein prior to the institution of this action.

4. That the sale, circulation and distribution of printed matter described in Paragraph No. 4 of the foregoing Findings of Fact do not constitute "sedition" as defined by chapter 100 of the Acts of the Kentucky Legislature of 1920 (Ky. Statutes §§ 1148a-1 to 1148a-14, inclusive), and such activities are not prohibited thereby or in violation thereof.

5. That by threatening to continue to arrest, imprison and prosecute the plaintiffs in the manner and to the extent

described and set out in Paragraph No. 3 of the foregoing Findings of Fact the defendants, other than Hubert Meredith, Attorney General, have deprived the plaintiffs of rights, privileges and immunities secured by the Constitution of the United States; that plaintiffs have no adequate remedy at law and on behalf of themselves and others of "Jehovah's witnesses" they are entitled to a permanent injunction restraining the said defendants from continuing such deprivation.

6. That the provisions of chapter 100 of the Acts of the Legislature of Kentucky of 1920 (Ky. Statutes §§1148a-1 to 1148a-14) are not applicable or effective to prohibit or interfere with the plaintiffs or others of "Jehovah's witnesses" in circulating, selling or distributing the herein described printed matter and the acts and activities of the plaintiffs in so doing are not violative thereof, therefore the Court concludes it is unnecessary to consider or determine the question presented as to the constitutionality of the Act.

7. That the defendant Hubert Meredith, Attorney General of the State of Kentucky, was not a party to any threats to continue the arrest, imprisonment or prosecution of the plaintiffs or others of "Jehovah's witnesses", and since it is stated in the petition that he "is joined in this suit solely because the plaintiffs attack the validity of a statute of the Commonwealth of Kentucky" this action as to him should be dismissed.

Judgment.

It is therefore ordered and adjudged by the Court as follows:

1. That as to the defendant, Hubert Meredith, Attorney General, this action is dismissed.

2. That the defendants, L. O. Smith, individually and as Mayor of the City of Harlan, Kentucky, Daniel Boone Smith, individually and as Commonwealth's Attorney, the City of Harlan, its agents and officers, Harmon Noe, individually and as Chief of Police of the City of Harlan, Lige Howard, individually and as Police Judge of the City of Harlan, Estle Giles and Ben F. Unthank, individually and as members of the Police Department of the City of Harlan,

and H. C. Caywood, individually and as Sheriff of Harlan County, Kentucky, be and are hereby enjoined and restrained from hereafter arresting, imprisoning or prosecuting the plaintiffs and others of "Jehovah's witnesses" for or on account of circulating, selling or otherwise distributing in a peaceable and orderly manner the literature, books, publications and printed matter listed, identified and described in Paragraph No. 4 of the foregoing Findings of Fact, or by threats or otherwise interfering with such activity on the part of plaintiffs and others of "Jehovah's witnesses", under color of chapter 100 of the Acts of the Kentucky Legislature of 1920 (Ky. Statutes §§ 1148a-1 to 1148a-14, inclusive) or upon the ground that such acts constitute "sedition" in violation of any law, statute or ordinance of the State of Kentucky, provided, however, nothing herein shall be construed to restrain or interfere with the defendants or either of them in the performance of their public duties as officers of the State of Kentucky in the arrest or prosecution of the plaintiffs or other persons for trespass or unlawful entry upon private property or other acts in violation of law of the State of Kentucky, or to restrain or otherwise interfere with the prosecution or other criminal proceedings pending in the courts of the State of Kentucky under the indictments set out in the petition or otherwise instituted therein prior to the institution of this action.

ELWOOD HAMILTON,
Circuit Judge.
H. CHURCH FORD,
District Judge.
MAC SWINFORD,
District Judge.

June 4, 1941.

A copy.
Attest: A. B. ROUSE,
Clerk.